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EU energy policy: agenda dynamics and policy change

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I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

Signature:
Raphael Sauter

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List of Acronyms and Abbreviations used in the thesis

ACF	Advocacy Coalition Framework
ACPM	Advisory Committee for Programme Management
AQG	Atomic Questions Group
CEC	Commission of the European Communities
CIRCA	Communication & Information Resource Centre Administrator
CNS	Convention on Nuclear Safety
CONCERT	Concertation on European Regulatory Tasks
COREPER	Committee of Permanent Representatives
DF	Decommissioning funds
DG	Directorate-General
DG ENV	Directorate-General for the Environment
DG TREN	Directorate-General for Transport and Energy
EAEC	European Atomic Energy Community
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEC	European Economic Community
ENEF	European Nuclear Energy Forum
ENISG	European Nuclear Installations Safety Group
ENISS	European Nuclear Installations Safety Standards Initiative
EP	European Parliament
EREC	European Renewable Energy Council
ETS	Emission Trading Scheme
EU	European Union
FiT	Feed-in Tariff
GHG	Greenhouse gas
GO	Guarantee of Origin
HLG	High-Level Group
IAEA	International Atomic Energy Agency
IPCC	International Panel on Climate Change
ITRE	Committee on Industry, Research and Energy
JC	Joint Convention on the Safety of Spent Fuel Management and on the

	Safety of Radioactive Waste management
LCPD	Large Combustion Plant Directive
MEP	Member of the European Parliament
MLG	Multi-level governance
MSF	Multiple Streams Framework
Mtoe	Million tonnes of oil equivalent
NEA	Nuclear Energy Agency
NGO	Non-governmental organisation
NP	Nuclear package
NPP	Nuclear power plant
NRWG	Nuclear Regulators' Working Group
OECD	Organisation for Economic Cooperation and Development
PET	Punctuated Equilibrium Theory
PINC	Illustrative nuclear programme
PNA	Policy Network Analysis
QMV	Qualified majority voting
RAMG	Regulatory Assistance Management Group
RES	Renewable energy sources
RES-E	Renewable electricity
RES-H/C	Renewable heat and cooling
RL	Reference level
ROC	Renewable Obligation Certificate
RSWG	Reactor Safety Working Group
SEA	Single European Act
SWOT	Strength, weaknesses, opportunities, and threats
TACs	Transfer Accounting Certificates
TEC	Treaty establishing the European Community
TWh	Terawatt hour
WENRA	Western European Nuclear Regulators Association
WPAQ	Working Party on Atomic Questions
WPNS	Working Party on Nuclear Safety

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Brussels, May 2010

Abstract

This thesis analyses EU energy policy from a comparative agenda-setting perspective providing new theoretical and empirical insights into EU energy policy-making. Although two of the founding treaties of the European Communities covered the coal and nuclear sectors, the European Union has struggled ever since to establish itself in the field of energy policy. In particular, it failed to include an explicit Community competence on energy in Community primary law in subsequent treaty revisions – with the exception of the new Title XX on Energy introduced with the Lisbon Treaty. Nonetheless the European Union has established itself as an important player in European energy policy, as reflected in EU directives on energy market liberalisation, energy efficiency standards and targets for renewable energy sources. At the same time, policymakers at various levels, business, NGOs and experts agree that more EU energy policy is needed to face current and future transnational policy challenges, notably, climate change and energy security. This has led to numerous studies with policy recommendations on EU level action in the field of energy policy. By contrast, very few studies have analysed the drivers and barriers of EU energy policy-making and factors that can explain policy change and stability. Yet a better understanding of EU energy policy-making is a necessary precondition for the development of appropriate policy recommendations. This thesis provides an analysis of EU energy policy-making by identifying factors that can explain change and stability from an agenda-setting perspective. Drawing upon EU studies and agenda-setting literature the analysis distinguishes between two different agenda-setting routes, high and low politics, along the key stages of an issue career: initiation, specification, expansion and entrance. It accounts for the following key variables in EU agenda-setting: contextual factors, policy entrepreneurs, issue definition, and institutional venues. These are applied to two contrasting case studies of EU energy policy: nuclear energy and renewable energy. The study shows how and why Community initiatives failed in an institutionally ‘strong’ EU energy policy arena under Euratom, but succeeded in the field of renewable energy under the EC Treaty.

1 Introduction

1.1 Objective of the study

The objective of this thesis is to explain change and stability in EU energy policy-making. Drawing upon an EU agenda-setting framework this thesis aims to explain policy outputs of EU energy policy-processes. It distinguishes between two EU agenda-setting routes, low politics and high politics, and shows that each agenda-setting route is subject to different agenda dynamics which ultimately affects policy output. In order to better understand these agenda dynamics and identify causal mechanisms this thesis applies four explanatory concepts: contextual factors, policy entrepreneurs, issue definition, and institutional venues. Their explanatory power is tested in two empirical case studies.

The thesis compares two EU energy policy measures, a Commission proposal for legally binding provisions on nuclear safety and radioactive waste management, the so called nuclear package, and a Commission proposal for legally binding targets for the share of renewable energy sources (RES) in the EU energy mix. While the nuclear package proposed in 2002/03 was rejected by a blocking minority in the Council followed by a lengthy consultation process that resulted in a new legal proposal on nuclear safety in November 2008, political agreement with the Council and the European Parliament (EP) was reached on mandatory national RES targets in December 2008, after only less than a year of discussion. Why did an energy policy proposal, where the European Union and thus the Commission as formal agenda-setter benefits from a legally strong position on the basis of Euratom, fail, whereas another energy policy proposal based on the Commission's competences in environmental policy under the EC Treaty succeeded?

Answering this question is relevant for several reasons. First, it is now widely acknowledged among policymakers, stakeholders, and experts that an EU energy policy is essential not only to achieve a competitive internal energy market but also to respond to at least two other key challenges: energy security and climate change. New evidence on climate change put forward by the IPCC in 2007 and energy disputes between Russia and the Ukraine at the beginning of 2009 underlined the transnational nature of key challenges of energy policy and thus the need for an increased role of the EU in this

policy field. Second, EU energy policy decisions have important ramifications for national energy policies in EU Member States, for instance, by imposing institutional structures and pre-defining political choices. Finally, despite the recognition of the need for EU energy policy and its increasing influence on national energy policy processes, there is a significant empirical and theoretical knowledge gap on how EU energy policy processes function. This lack of understanding makes it impossible to explain policy outputs sufficiently and to derive suitable policy recommendations.

Energy-related issues have been at the core of the European Union (EU)¹ from its very beginning with two of its founding treaties specifically aimed at energy sources (the European Coal and Steel Community created in 1951, which expired in 2002, and the European Atomic Energy Community in 1957). However, the EU has struggled ever since to establish itself in the field of energy policy, and has failed to expand its formal jurisdiction in this policy domain despite regular attempts to establish such a jurisdictional expansion during intergovernmental conferences on Treaty revisions. It was only with the Lisbon Treaty that came into force on 1 December 2009 and its Title XX on “Energy” that such formal jurisdiction was introduced.

Despite this ‘formal failure’ to achieve changes in primary law until the end of 2009, the EU had established itself as an important player in the field of energy policy after the entry into force of the Single European Act (SEA) in 1986. This was based on the Commission’s jurisdiction in other policy areas, including the internal market and the acknowledgement of the Community’s competence to regulate environmental matters that are relevant to the functioning of the internal market. These environmental policy related provisions were reinforced by the Maastricht Treaty in 1992 and the Amsterdam Treaty in 1997. This is reflected in a significant amount of EU legislation in the area of energy policy. Major legal outputs include three legislative packages on the liberalisation of European energy markets, targets for the promotion of renewable energy sources and energy efficiency standards as well as numerous interventions on the basis of competition policy and state aid control.

¹ The term European Union is used here as it is commonly used since the ratification of the Maastricht Treaty in 1993. It includes the European Communities. While this thesis is interested in EU energy policy-making and thus the EU’s role in energy policy-making, the European Commission as formal agenda-setter is of particular interest in the analysis.

Very few studies have analysed EU energy policy-making in detail. While there are numerous studies *for* energy policy focusing on specific policy instruments, there are a limited number of studies providing an analysis *of* EU energy policy-making. The majority of EU energy policy studies identify specific policy solutions to solve a given problem (e.g. energy insecurity, climate change) or to achieve a given objective (e.g. energy security, competitive energy markets or carbon emission reduction); these studies are often based on economic perspectives (e.g. Helm, 2007). Although they may provide a thorough analysis of the problems and the solutions at hand, they generally ignore the underlying policy processes that prevent or enable the intended policy outputs or, more broadly speaking, policy change. Such an analysis *of* energy policy is however an important pre-condition for developing suitable strategies for policy change. This is the fundamental starting point of this study.

To summarise, the objective of this thesis is to contribute to a better understanding of the processes and dynamics of EU energy policy-making. It analyses how certain agenda-setting routes influence policy change and stability in EU energy policy-making. Agenda-setting is interested in why and how certain issues make it to the formal agenda of the policy-making process. Going one step further, the subsequent analysis is interested also why an issue that made it to the formal decision agenda was (not) formally adopted as policy. The analytical perspective therefore includes both the agenda-setting and decision-making processes. The study pays particular attention to contextual factors, policy entrepreneurs, issue definition, and institutional venues as explanatory factors.

This thesis makes several contributions to knowledge. Empirically, it enables us to identify relevant factors and their influence on policy change and stability in EU energy policy-making. It contributes to theory building by testing and further developing existing frameworks on EU agenda-setting. At the policy level, it provides tentative insights into the possible ways of steering change in EU energy policy-making.

1.2 The argument of the thesis

The central argument of this thesis is that the issue career, i.e. the way in which an issue is initiated, specified, expanded and thus brought onto the political decision agenda, affects the degree of policy change in EU energy policy. It is shown that the level of

politics at which an issue is initiated, specified and expanded has a particular effect on agenda dynamics and ultimately on policy outputs. High politics, e.g. the European Council, and low politics, e.g. low-level officials and expert communities, affect EU agenda dynamics differently. The study therefore distinguishes between two routes of agenda-setting, one that starts at the level of ‘low politics’ and one where issue initiation takes place at the level of ‘high politics’. Issue initiation at the level of low politics offers different opportunities for policy entrepreneurs to steer proposals into certain venues favourable for their policy objectives, whereas issue initiation at the level of high politics helps overcome administrative inertia.

However, the study shows that the distinction between low and high politics agenda-setting routes is not sufficient on its own to explain policy change. Contextual factors such as ‘focusing events’ and public opinion are important additional factors that affect EU energy policy. Whilst policy initiation at the level of low politics faces the challenge of attracting the attention of high politics protagonists, agenda-setting at the level of high politics needs to be translated into appropriate proposals at the administrative level. Moreover, the thesis explores how policy entrepreneurs can take advantage of the EU’s multiple access points to the agenda. The concept of policy entrepreneurs is applied to a broad set of actors including not only all three EU institutions directly involved in the decision-making process (i.e. the Commission, the Council of Ministers with the European Council, and the EP), but also other players with an interest in the relevant policy area. The analysis suggests that even formally strong agenda-setters like the Commission, with its formal right of initiative, need to act as policy entrepreneurs by exploiting policy windows, by putting forward problem definitions favourable to their own objectives and interests, by building winning coalitions, and by using the right institutional venues. Venue shopping can therefore be a powerful strategy for policy entrepreneurs in EU energy policy making.

1.3 The study’s theoretical foundations and empirical approach

In developing this argument, the thesis draws upon two strands of literature: EU studies and agenda-setting theories. Building on key concepts from Kingdon’s Multiple Streams Framework (MSF) and Baumgartner and Jones’ Punctuated Equilibrium Theory (PET), the thesis develops an agenda-setting framework for the analysis of EU policy-making. The analytical framework follows Princen and Rhinard’s (2006) basic

distinction between ‘low politics’ and ‘high politics’. In addition, it draws upon the distinction of an issue career in the agenda-setting literature: initiation, specification, expansion, and entrance. It integrates key concepts from the agenda-setting literature and relevant contributions from EU studies. The proposed framework puts particular emphasis on four conceptual elements: contextual factors, policy entrepreneurs, issue definition, and venue shopping.

Policy entrepreneurs (Kingdon, 1995 [1984]; Mintrom and Vergari, 1996) are central players who aim for policy change or stability. For this purpose policy entrepreneurs need to identify problems, define them in a way that is accessible to relevant audiences, and build coalitions. In the absence of strong or well-prepared policy entrepreneurs able and willing to seize a policy window, for instance in the case of focusing events, policy change is unlikely to materialise (Pralle, 2006). Policy entrepreneurs need to use policy windows opened up by contextual factors and construct favourable issue definitions (Baumgartner and Jones, 1993) or frames (Nylander, 2001) to achieve policy change. In addition, they need to act as “political entrepreneurs” (Broscheid and Coen, 2003) by creating new institutional venues or by using existing institutional venues among the multiple EU venues receptive for the policy objectives.

The theoretical propositions developed for this study are tested by qualitative comparative case study research. Key sources of information were primary and secondary documentation, press articles, research articles, and 47 semi-structured interviews.

1.4 The structure of the thesis

The study is divided into eight chapters. The following **Chapter 2** sets the scene for this thesis by providing the general context to EU energy policy, the EU’s energy mix and major trends in EU energy supply and demand, major policy developments over the last decades and its legal basis.

Chapter 3 develops a theoretical framework for the analysis of EU energy policy-making. After briefly presenting different theoretical approaches to European integration that were mainly inspired by the international relations literature, Chapter 3 argues that a comparative approach to the study of EU policy-making is most suitable

for the objective of this study, i.e. to contribute to a better understanding of EU energy policy-making. It then develops an EU agenda-setting framework for the analysis of EU energy policy-making and concludes with a review of relevant previous studies.

Chapter 4 outlines the research design and methodological approach chosen for the empirical analysis. It defends the choice of a qualitative comparative case study approach while discussing its potential shortcomings and presenting ways of addressing them. It then elaborates the rationale for case study selection and outlines how the key concepts of the theoretical framework are operationalised. Finally, strategies for data collection and data analysis used in the empirical part of this thesis are presented.

The empirical analysis of two case studies is presented in **Chapters 5 and 6**. An analysis of the policy process on the nuclear package is presented in Chapter 5, the RES policy process is analysed in Chapter 6. Both chapters provide a short background section to each case study including the EU policy and institutional context. They are then structured along the major steps of an issue career: issue initiation, issue specification and issue expansion. Chapter conclusions provide a summary of the key findings in each chapter.

Chapter 7 presents a comparative analysis of the empirical findings in Chapters 5 and 6. Building on the operationalisation of the key concepts developed in Chapter 4, it discusses the theoretical implications of the empirical findings for each key concept.

Chapter 8 draws the study's main conclusions together. It answers the research questions, summarises the study's contribution to knowledge, its limitations and implications for future research. It concludes with tentative policy implications.

2 EU energy policy

This chapter provides a general introduction to EU energy policy: more case study specific information related to EU energy policy is provided in sections 5.2 and 6.2. The objective of this chapter is to lay out major trends in the EU's energy mix, key developments of EU energy policy in response to these trends and the legal basis for EU energy policy-making. The chapter does not aim to provide a legislative inventory of EU energy policy or to give an overview of national energy policies in EU Member States.²

2.1 The EU's energy mix and recent trends

In order to understand key arguments in the EU energy policy-making process it is necessary to take account of the EU's energy mix and major trends in the EU energy sector. While this section focuses on more recent historical developments in the EU's energy mix since 1990 as the context for the analysed policy processes in this thesis, a brief overview on the situation in the early days of EU energy policy is provided as background information for major developments in this policy area in the 1970s and 1980s.

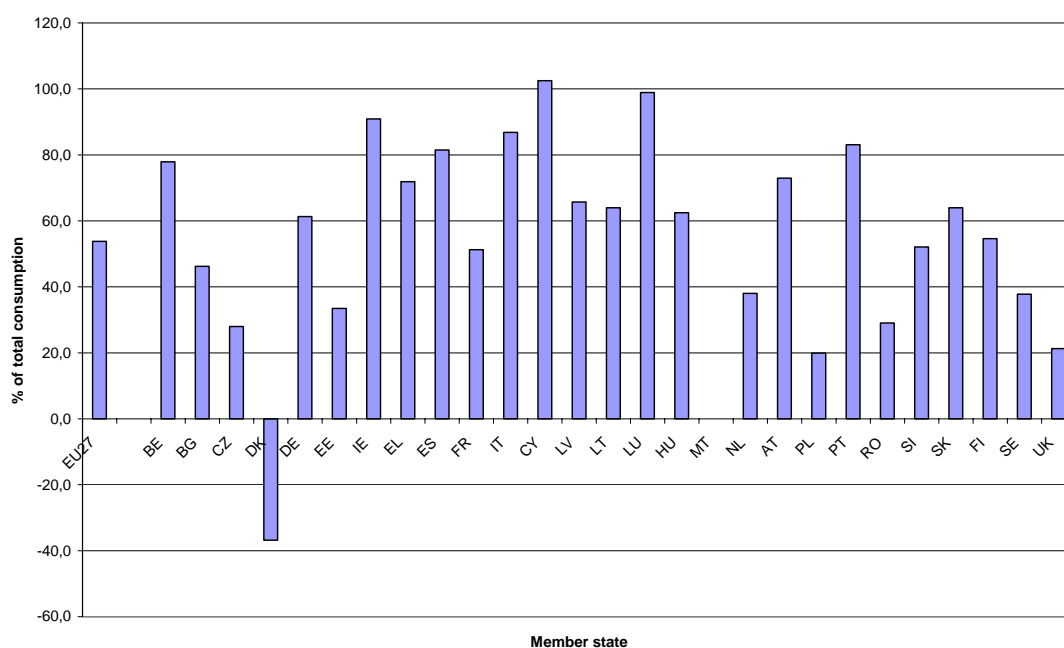
In 1970 the European Community energy consumption was 973 Mtoe of which 64% was resourced from oil, 23% from coal, 8% from natural gas and 5% from hydropower. It was expected that total demand would increase to 1,995 Mtoe by 1985 with 65% of this demand being met from oil, 15% from natural gas and 9% from nuclear energy. As a consequence energy import dependence was predicted to increase from 67% in 1970 to 70% in 1980 (CEC, 1972). It was expected that this trend would only change in 1985 mainly as a consequence of an increased share of nuclear energy (*ibid.*). Actual energy demand however did not follow the expected growth rates due to ambitious energy efficiency policies that were implemented also in response to the oil crises in the 1970s. In 1990 gross energy consumption of the EU27 was 1,660 Mtoe and increased to 1,825 Mtoe in 2006. In 2006 oil contributed nearly 37%, natural gas 24%, solid fuels (mainly coal) around 18%, nuclear 14% and renewables 7% to cover EU27 energy consumption. While the share of solid fuels had declined since the 1990s, the share of gas increased. The contribution of nuclear energy remained rather stable, whereas renewables increased from a low level (CEC, 2009c).

² For a recent overview on EU legislation in the field of energy policy see for example Moussis (2009).

Most EU27 Member States have a relatively high share of fuel imports in the total energy consumption as shown in Figure 1. The EU27's share of imports in 2006 was over 50%. Before the adoption of the climate and energy package it was expected that the overall import share would increase to 65% by 2030 and that the import share in gas consumption would increase from 57% to 84% and import share in oil consumption from 82% to 93% (CEC, 2007b). While the overall EU import dependence of 50% in 2006 was considerably lower than in the 1970s, the situation of a forecasted significant increase in energy import dependence had not changed significantly since 1970.

As in the past, energy import dependence was used as justification for new policy measures at the EU level in order to increase the EU's energy security. In 2000 the Commission presented a Green Paper on the security of EU energy supply that identified various energy policy options including nuclear energy and measures on nuclear safety and radioactive waste management (see 5.3.1). In January 2007 the EU's energy import dependence was one major rationale for the publication of the climate and energy package sparked by the energy crises between Russia and Ukraine (see 6.3.1).

Figure 1: Share of imports of solid fuels, gas and oil in EU27 in 2006 (in %)

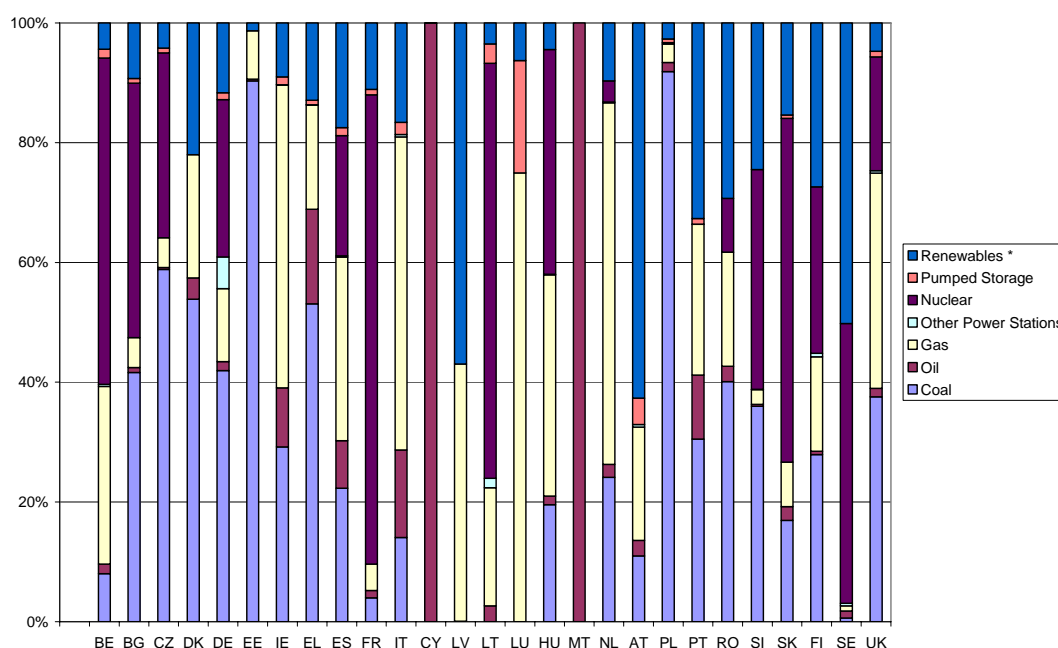


Source: European Commission (CEC, 2009c)

Apart from security of supply, concerns about climate change constituted a major driver for recent dynamics in EU energy policy-making. The energy sector is responsible for around 80% of the EU's greenhouse gas (GHG) emissions (CEC, 2009c). Electricity generation alone accounts for around one third of the EU's GHG emissions and is therefore of relevance not only for security of supply reasons but also for the reduction of GHG emissions. In 2006 coal was used to generate 28.6% of the EU27's gross electricity output, while gas contributed 21.1%, nuclear energy 29.5% and renewables 14.6%.

Figure 2 shows the considerable differences in the structure of national electricity generation among the EU27 Member States. National power generation portfolios ultimately reflect national preferences in energy policy and constitute an important factor in EU energy policy related decision-making processes. Extreme examples are the nuclear dominated French electricity system, the Austrian nuclear free power generation mix, and the Polish coal-based power sector.

Figure 2: Share of energy sources in gross electricity generation in 2006 (EU27)

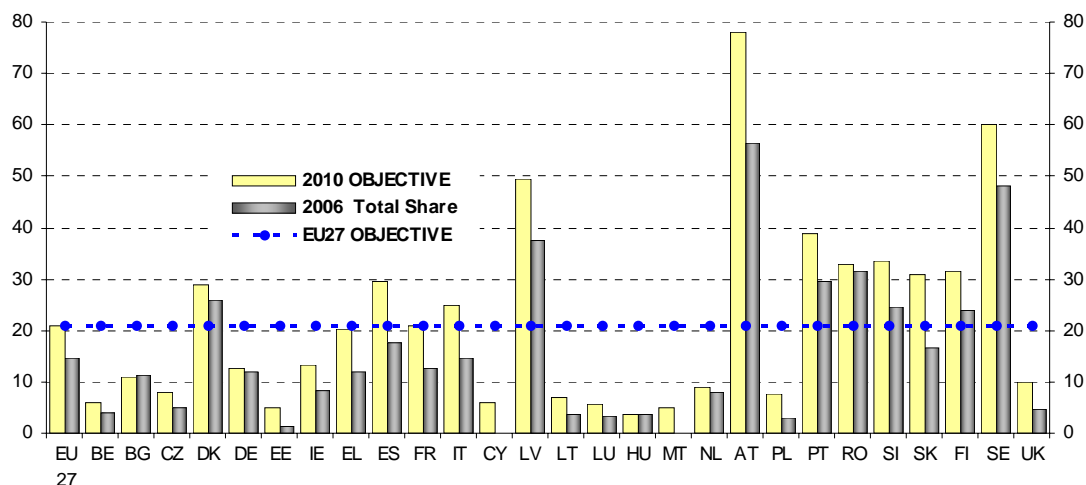


Source: European Commission (CEC, 2009c)

Despite an increase in EU27 gross electricity consumption from 2,622 TWh to 3,357 TWh between 1990 and 2006, RES could increase their share in gross electricity consumption from 11.8% to 14.6% in the same period. Yet, there is still a significant

gap compared to the 2010 renewable electricity (RES-E) objective of 21% with considerable differences among Member States (see Figure 3) (CEC, 2009c).

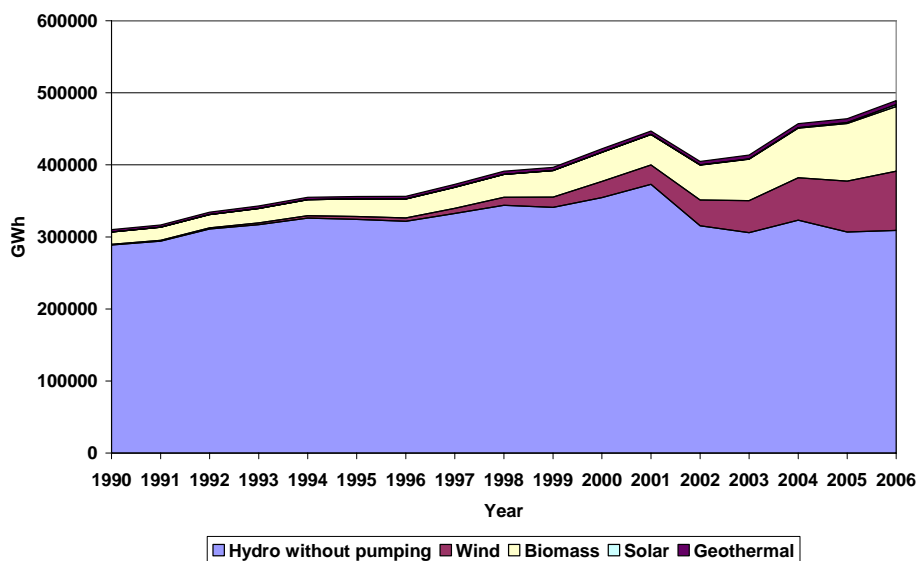
Figure 3: Share of electricity from renewable energy sources in total electricity consumption (%) - EU27



Source: European Commission (CEC, 2009c)

Hydropower provides the largest component of renewables-based electricity generation in EU27. Among 'new' RES, biomass and wind (mostly onshore) showed the strongest increase in EU27 RES electricity generation since 1990; biomass increased from around 17 TWh to 90 TWh and wind energy from below 1 TWh to 82 TWh (see Figure 4).

Figure 4: Gross RES electricity generation in 2006 (EU27, without pumping)



Source: European Commission (CEC, 2009c)

The share of nuclear energy of gross energy consumption in EU27 remained rather stable over the last decades. In 2006 the share of nuclear energy in gross electricity generation in the EU27 was 23.5% (CEC, 2009c).

2.2 Major developments in EU energy policy: security of supply, internal market and environmental protection

Trends in the EU's energy mix had important ramifications for major developments in EU energy policy and policy priorities over the last decades. Energy related issues have been at the core of the European Communities from the beginning as two founding treaties were concerned with the energy industry: the 1951 European Coal and Steel Community (ECSC), which expired in 2002, and the 1957 European Atomic Energy Community (EAEC). These treaties covered the coal and nuclear sectors and, in principle, aimed at the creation of free and integrated markets in both sectors (McGowan, 1993).

Although the Treaty of Rome establishing the European Economic Community (EEC) in 1957 contained no provisions on energy policy, it had implications for the energy industry by its provisions on competition policy, in particular those dealing with state enterprises and their conduct; these were hardly used until the 1980s (*ibid.*). Since then the European Commission has struggled to establish itself in the field of energy policy. Early attempts resulted in policy proposals and later the Commission also sought to include an explicit Community competence on energy in Community primary law in subsequent treaty revisions which succeeded eventually in the new Title XX on Energy of the Lisbon Treaty³. The last five decades of EU energy policy, or attempts to introduce such a policy, have been characterised by changing priorities and policy objectives. In the early days competition in the energy market(s) and security of supply were key objectives, whereas environmental protection grew in importance from the early 1990s. Adjustments in policy priorities were mainly caused by changes in the policy context and institutional changes in EU energy policy-making.

Despite the Suez crisis in 1956 and the subsequent increasing concern with secure energy supplies, until the oil crisis of 1973, the underlying assumption of Community

³ New Title XX "Energy", Art. 176A allocates powers to the European Union "in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment".

energy policy was that cheap energy was more important than secure supplies for economic growth; furthermore it was assumed that trade with oil exporting countries provided mutually beneficial relationships (Alting von Geusau, 1975). The “First Guidelines Towards a Community Energy Policy” published in 1968 argued that: “since the energy policy is intended to serve the consumers’ interests, its basic guiding factor must be competition” (CEC, 1968: 7). However, nothing substantial was agreed by Member States regarding whether a Community energy policy should follow this or any other direction. National energy markets were dominated by national monopoly utilities.

While the continuous increase in energy demand and the increased share of energy imports in the Community’s energy supply mix since the 1950s (see 2.1) had already been identified in an earlier Commission analysis (CEC, 1972), the 1973/74 oil crisis reinforced a major shift in the EU’s energy policy priorities towards security of supply. The 1974 Community strategy therefore put the reduction of the Community’s energy dependence at the top of the agenda and R&D policy was considered as “one of the important elements of this new strategy” (CEC, 1974: 8). While a Community directive on the maintenance of minimum stocks of fossil fuels was adopted in 1975 (CEC, 1975), this strategy, aimed at a Community energy policy, was not very successful. This was expressed in the Commission’s own assessment in 1977: “It is now nearly four years since oil prices quadrupled, and the Community’s energy policy is still unclear” (CEC, 1977: 4). Developments were overshadowed by the establishment of the International Energy Agency (IEA) and diverging national interests. After the UK had discovered large North Sea oil and gas reserves within its territory, it was opposed to any policy development at the European level that could have undermined its national sovereignty on these reserves (Black, 1977).

Overall the developments in the 1970s and the attention paid to security of supply affected the objective of Community energy policy: policy was to deal with the structure of energy balances rather than with the structure of energy markets (McGowan, 1993). Despite these ‘formal failures’ to establish a comprehensive Community policy McGowan (1996b: 14) argued that by the 1980s the Commission had succeeded in establishing a place in energy policy-making. Its role was essentially in information gathering, target-setting, and enabling activities through R&D funding (*ibid.*). The main objective of these early attempts towards a Community energy policy

was to reduce vulnerability to energy shocks and thereby to ensure the effective functioning of European economies.

From the mid-1980s there was a reorientation in Community energy policy towards establishing an internal energy market. This was a result of developments in national energy markets, changes in Member States governments' attitudes towards the energy industries and a strengthened position of the Commission in Community decision-making (McGowan, 1993). Besides developments in other sectors with ramifications for the energy sector, the key development was the new impetus for the European integration process through the Single European Act (SEA), signed in 1985, and the Internal Market Agenda adopted in 1986 (Matlár, 1997).

As a result of the SEA the Commission could act more powerfully in the energy sector on the basis of majority voting related to the internal market, and as a result of the Maastricht Treaty from 1993 – reinforced by the Amsterdam Treaty in 1997 – with respect to environmental issues (Andersen, 2001). The Commission proposed policies and regulations, to include the energy sector, and sought to bring the energy industries into line with principles of Community law and in particular with competition provisions (McGowan, 1996a). Initiatives on energy policy were therefore not driven by positive objectives related to energy but by general deregulation policy objectives (Andersen, 2001). The Commission assumed that energy policy related objectives would be achieved by these more general policy objectives.

In the late 1980s the internal market became the driving force in Community energy policy as acknowledged in the 1995 White Paper:

“Market integration is the central, determining factor in the Community's energy policy. Without such integration other activities lose their justification since their essential aim is to use Community support instruments, such as the Trans-European Networks, in order to help in providing production, transport and distribution infrastructures enabling the European market to respond to demand, or to make supplies to that same market dependable. A fragmented market refers all such activities back to national level, and could undermine efforts to improve the Community's competitiveness.” (CEC, 1995b: 3).

This market approach was reflected in the first electricity directive that aimed at the introduction of a free European electricity market; this was proposed in 1992 and adopted in 1996 (CEC, 1997a). A similar directive for the gas market was adopted in 1998 (CEC, 1998b) and a second liberalisation package was adopted in 2003 (CEC, 2003b; c) amending both directives with the objective to introduce an integrated European energy market by 2007. In reaction to insufficient progress a third liberalisation package was announced in 2007 and adopted in 2009 in order to ensure a fully integrated and competitive European energy market (CEC, 2009a; b).

Apart from energy market liberalisation the new policy dynamic after the adoption of the SEA was most visible in the area of environmental protection (McGowan, 1996a). Building on the European Environmental Action Programmes first published in 1973, the Large Combustion Plant Directive (LCPD) was proposed by the Commission in 1983 on the legal basis of Art. 100 and 235 EEC. It was adopted in 1988 on the legal basis of the new Art. 130s EEC as a measure against acid rain (Council, 1988). This trend towards environmental objectives in EU energy policy was reinforced after environmental objectives were enshrined in the Maastricht and Amsterdam Treaties (see 2.3). Moreover, in 1990 climate change emerged formally on the EU agenda leading to joint conclusions by the Energy and Environment Council that called for a stabilisation of CO₂ emissions at the 1990 level by 2000. Since the 1990s several energy efficiency directives and regulations as well as RES targets have been adopted (see also 6.2).

Although the liberalisation agenda was the predominant driver in the early 1990s, environmental issues, and in particular climate change, gained in importance in the late 1990s particularly after the Kyoto summit in 1997 (Collier, 2002). The Commission, and in particular DG Environment, was increasingly keen to establish itself as a global leader in climate change policy as incorporated in the EU's emissions trading system (ETS) (Skjærseth and Wettstad, 2008).

Increasing oil prices, and the recognition of climate change as global policy challenge, strengthened the Community's drive to focus on security of supply and climate change alongside the ongoing drive for energy market liberalisation (CEC, 2000b). This resulted in new initiatives in the area of nuclear energy and renewable energy sources.

Climate change and energy security as key priorities in Community energy policy were apparent in the latest wave of Community energy policy-making, initiated at the informal European Council at Hampton Court in autumn 2005, and led to the publication of the climate and energy package at the beginning of 2007 (for more details see Chapter 6).

2.3 Legal basis of EU energy policy

After the expiry of the ECSC in 2002, the EAEC remains as the only fuel specific Treaty providing the Community with a legal basis to deal with issues related to nuclear energy. The EC Treaty was applicable to all other types of fuel until the Lisbon Treaty came into force on 1 December 2009, but did not lay down any specific legal basis for energy policy except for trans-European networks (Art. 154).

However, Community competence in a certain policy area cannot only be derived from a specific legal basis included in the Treaties, but also from horizontal policy objectives enshrined therein (Cameron, 2007a). On the basis of the EC Treaty two mechanisms were the basis for the gradual establishment of an EU energy policy (Delvaux and Guimaraes-Purokoski, 2008: 21-27): first, Community action by enforcing general EC Treaty provisions and, second, by adopting secondary legislation on the basis of Community competences in the internal market and in relation to environmental objectives. Relevant EC Treaty provisions include the rules on the free movement of goods (Art. 28-31), the rules on the right of establishment and the free movement of services and capital (Art. 43-60), the rules on competition (Art. 81-82 and 86), and the rules on State aid (Art. 87-88). Secondary legislation was mainly based on Art. 95 relating to measures to achieve the internal market, Art. 174-176 on environmental policy and Art. 308 allowing Community action to achieve objectives enshrined in the EC Treaty in the absence of specific provisions.

Among the objectives of Community environmental policy under Art. 174, those most relevant to energy policy were “preserving, protecting and improving the quality of the environment” and the “prudent and rational utilisation of natural resources”. These provided a legal basis for policy measures in the field of energy efficiency and the promotion of ‘clean’ energy sources such as renewable energy (see also 6.2.1). According to Art. 175 decisions based on Art. 174 are, in general, subject to the co-

decision procedure under Art. 251. However, “measures significantly affecting a Member State’s choice between different energy sources and the general structure of its energy supply” (Art. 175(c)) require unanimity among Member States after consultation with the EP (as well as the Economic and Social Committee and the Committee of the Regions). Art. 176 allows Member States to maintain or introduce more stringent protective measures than those adopted under Art. 175, as long as these measures are compatible with the Treaty and are notified to the Commission.

Thus, while proposals on the basis of Art. 308 and Art. 175(2) need to be adopted unanimously by the Council after consulting the EP, decisions under Art. 95 and Art. 175(1) are subject to the co-decision procedure under Art. 251. This was after the Amsterdam Treaty extended the co-decision procedure as standard procedure in environmental policy legislation. Thus there is no procedural difference between Art. 95 and Art. 175(1).

To sum up, this brief overview shows that the legal basis for nuclear energy has remained unchanged over the last decades, whereas the legal basis for other areas of energy policy has changed considerably due to changes in EU environmental policy. The introduction of an explicit EU competence in environmental policy, and the gradual full involvement of the EP in this policy area, enabled new policy initiatives in the field of energy efficiency and renewable energy in particular. Sections 5.2 and 6.2 will elaborate this further in view of the two case studies of EU energy policy analysed in this thesis.

2.4 Chapter conclusions

This brief overview of EU energy policy has shown that contextual and institutional changes have significantly affected major developments in EU energy policy since the late 1960s. Concerns on import dependence were a key driver for the development of energy policy objectives at the Community level. In the 1990s it was environmental concerns that became a central driver for EU energy policy initiatives. This was also due to increasing concerns about climate change and stimulated by changes in EU primary law that enabled new EU policy initiatives in the environmental policy area. The following chapter develops a theoretical framework to better understand how

different factors – including contextual and institutional elements – influenced EU energy policy-making.

3 Theoretical framework

3.1 Introduction

This thesis draws mainly upon two strands of literature: EU studies and agenda-setting theories. The chapter argues that an agenda-setting framework is a suitable and theoretically robust framework to explain stability and change of EU energy policy. The next section discusses theoretical frameworks for the analysis of public policy in the context of EU policy-making and justifies the choice of agenda-setting frameworks. It then reviews two key contributions to the agenda-setting literature: Kingdon's Multiple Stream Framework (MSF) and Baumgartner and Jones' Punctuated Equilibrium Theory (PET). Building on these two frameworks the section elaborates an agenda-setting framework for the analysis of EU policy-making to serve as a basis for the subsequent analysis. It thus integrates key concepts from the agenda-setting literature and relevant contributions from EU studies. The proposed framework puts particular emphasis on four conceptual elements: contextual factors, policy entrepreneurs, issue definition, and venue shopping. This framework will finally be discussed in the context of energy policy analysis.

3.2 EU policy-making and the analysis of public policy-making

3.2.1 Understanding European integration

This section briefly reviews European integration theories in order to locate previous studies and my analysis of EU energy policy in the European integration literature. The early European integration literature builds strongly on frameworks developed for the analysis of international relations as reflected in early neo-functionalist and intergovernmentalist accounts of European integration (Rosamond, 2000)⁴.

Neo-functionalist approaches to European integration assume that functional integration at the economic or legal level will eventually lead to political unification as a result of functional spillover effects (Haas, 1958 [1968]; Lindberg and Scheingold, 1970). According to this perspective it is not nation states and their respective governments but national elites who are key actors in European integration. It is expected that, for

⁴ Rosamond underlines the central role of theories when analysing EU integration and EU policy-making: "Integration theory' [...] matters not just because of what it can tell us about the development of the EU or processes or regionalization, but also because of what it can tell us about the use of a fertile empirical location for the conceptual and theoretical development of the political sciences [...]" Rosamond (2000: 18).

example, interest groups that used to act at the national level with national governments and institutions as their target groups increasingly seek to influence the supranational level. With increasing awareness of the benefits of market integration this creates pressure for progress in political integration. Neo-functionalists expect Member States' power to weaken whereas transnational and supranational actor coalitions gain in influence and power. The slow down in European integration in the 1960s and 1970s questioned this theoretical perspective⁵, although it regained attention as a result of the integration push associated with the SEA in the mid 1980s and by the Maastricht Treaty in the early 1990s (Burley and Mattli, 1993).⁶

By contrast, intergovernmentalists argue that neo-functionalist theory underestimated the shelf life of the European nation state. They argue that Member States as the central actors in the integration process were strengthened rather than weakened by abandoning their sovereignty (Hoffmann, 1966; Milward, 1992). In contrast to neo-functionalist theory where national preferences are determined by the constellation among Member States at the international level, intergovernmentalists argue that domestic issues influence Member States' positions at the EU level. This was further developed by Moravcsik (1993) into liberal intergovernmentalism. That approach combines intergovernmentalism with a liberal theory of governments' preferences and rational choice theory in international relations where Member States agree to shift power to the supranational institutions to underline their mutual commitment that is in their own interest. Thus, power shift from the national to the supranational level is not only determined by the international context.

Although there are important differences between these two strands of literature, Hooghe and Marks argue that neo-functionalists and intergovernmentalists "talked past each other" (Hooghe and Marks, 2009: 4), the former focusing on day-to-day policy-making, the latter interested in major treaties.

⁵ In the foreword to the 1968 edition of his book, Haas himself had already acknowledged several shortcomings of neo-functionalist theories to European integration one of which was the re-emergence of nationalism in some Member States (e.g. France) that limited the predicted integration mechanism to materialise Haas (1958 [1968]).

⁶ For a more recent assessment on neo-functionalist approaches to European integration see Börzel (2005).

3.2.2 *EU policy-making*

While these theoretical perspectives on European integration will help to better understand studies of European integration in the field of energy policy (see 3.4.2), in the early 1990s the dominance of international relations in EU studies that regarded the EU predominantly as an international organisation was increasingly questioned. Instead analytical tools of comparative politics were brought forward as an alternative route in EU studies (Sbragia, 1992). The international relations perspective, central to European integration studies, was increasingly challenged by scholars interested in the EU as a political system applying theoretical frameworks mainly developed for the analysis of national policy processes to EU studies (e.g. Pollack, 2005: 26ff).

New institutionalism that emerged in the political science literature in the 1980s emphasised the role of institutions as intervening variables in the policy process. New institutionalism's main points can be summarised as follows: "Without denying the importance of both the social context of politics and the motives of individual actors, the new institutionalism insists on a more autonomous role for political institutions" (March and Olsen, 1984: 738). From this perspective the processes of politics are as much of analytical interest as the decisions or outputs of the policy process themselves. New institutionalism was picked up by European integration scholars and resulted in the development of three 'branches' of new institutionalism in European integration studies: rational choice, historical, and sociological institutionalism (Hall and Taylor, 1996; Aspinwall and Schneider, 2000).

In 1994 Hix (1994) argued that comparative politics⁷ had a more important role to play in the analysis of EU politics in order to "shed light on the nature of decision-making at the European level, rather than on the importance of organised interests for the development of national positions towards integration" (Hix, 1994: 14). More insight into the dynamics of policy-making at the EU level was considered necessary. It was argued that the EU could be regarded as a political system comparable to national political systems. From this it follows that analytical frameworks for the analysis of public policy developed in national contexts can be applied 'off the shelf' to the analysis of EU policy processes (Hix, 2005), or as concluded elsewhere: "the approach

⁷ I follow Hix' definition of "comparative politics" defined by "its discourse rather than its method". Hix differentiates between "comparative *politics* (the study of the internal politics of political systems) and comparative *analysis* (a particular method of enquiry)" Hix (1994: Endnote 2).

of the EU as a ‘polity like’ entity does appear to be an appropriate analytical device to use, at least as far as sectoral EU policy analysis is concerned” (Pallis, 2006: 154).

As for any other political system scholars studying EU policy-making and the EU policy process agree that there is no single model of EU policy-making. Instead the underlying policy process varies systematically across issue areas and over time (e.g. Wallace, Wallace et al., 2005b; Richardson, 2006). Wallace, Wallace *et al.* (2005a: 9) argue that “[d]ifferent lenses may be needed depending on the division of powers and influences between these different levels and arenas of policy development”. While the EU institutions involved need to play a central role in the analysis of the EU policy process country-level processes including the national and infra-national dimension, as well as the global level also need to be taken into account (*ibid.*).

This is reflected in the multi-level governance perspective on EU policy-making (Hooghe and Marks, 2001; Bache and Flinders, 2004; Jordan and Schout, 2006; Kohler-Koch and Rittberger, 2006; Tömmel, 2008a), which argues that authority and influence on the EU policy-making process are shared across multiple levels of government, including sub-national, national and supranational levels. Multi-level governance (MLG) approaches question a state-centric model on European integration and EU policy-making. National governments have no monopoly on EU policy-making or on the aggregation of national interests. MLG scholars assign independent influence to supranational institutions in EU policy-making, and recognise the influence of non-state actors at the various levels involved:

“National governments no longer monopolize EU decision making, partly because the European Parliament has become a co-legislator over much EU policy; increased public scrutiny of EU decision making increases the weight of public opinion on government policy; and national governments have limited control over supranational agents, such as the European Commission and the European Court of Justice” (Hooghe and Marks, 2001: 8).

No policy model can readily be applied to *the* EU policy process due to the strong variations among different EU policy processes.⁸ Any choice for a particular theoretical lens for the analysis of an EU policy process needs to be justified on the grounds of the policy field studied as well as the level and timing of the analysis. The choice of the theoretical framework in this thesis is based on the assumption that EU energy policy-making is closer to the garbage can model than to a rational choice model. The latter assumes that policy-making is based on clear policy objectives against which rational solutions are developed, adopted and implemented.⁹

As in a garbage can model originally developed by Cohen, March *et al.* (1972), the EU energy policy process is characterised by, first, poorly defined preferences and a loose collection of ideas, second, unclear technology with respect to decision processes, and, finally a fluid participation in the process. The introduction to European energy policy has illustrated these characteristics in this policy field (see Chapter 2). Changing energy policy objectives revealed a lack of clarity in preferences and ideas – reinforced by the involvement of a diverse range of national preferences and ideas. Decision processes were unclear due to the absence of a jurisdictional competence in this policy field – apart from the Euratom Treaty. The strong increase in stakeholders involved and interested in European energy policy over the last two decades showed fluid access to the policy process. In the following section it is argued that agenda-setting theories can serve as an appropriate framework to shed light into the ‘garbage can’ of EU energy policy-making.

3.2.3 *Agenda-setting frameworks for policy analysis*

The process of public policy-making – the subject of this study – is here defined as “[...] the manner in which problems get conceptualised and brought to government for solution; governmental institutions formulate alternatives and select policy solutions; and those solutions get implemented, evaluated, and revised” (Sabatier, 1999: 3). Problem or issue definition, as well as the formulation of alternatives, might however not only happen within governmental institutions but can involve a wide range of policy entrepreneurs.

⁸ The variations in EU policy processes and their multi-faceted nature are well illustrated in Nugent (2006): see in particular chapters 17, 18 and 19 on the budget policy, agricultural policy, and external relations.

⁹ On general arguments why the EU policy-making is closer to a garbage can model than a rational choice model see for example Richardson (2006).

In the policy analysis literature it was suggested to distinguish between different stages in the policy process (e.g. problem definition, agenda-setting, policy formulation, and implementation) (Howlett and Ramesh, 1995). This stages perspective has been criticised for portraying the policy process misleadingly as a process of more or less independent stages (Parsons, 1995; Hill, 2005). It is now widely acknowledged that the policy process does not happen in independent stages but in highly interdependent sequences. Nevertheless, the stages model is considered as a useful heuristic device to order the research process (John, 1998). Here it is suggested to use a basic distinction between the processes before and after the formal adoption of a policy, i.e. agenda-setting and policy formulation as opposed to policy implementation and evaluation.

The study of agenda-setting processes is a well-established research field in the political science literature and was originally interested in the question of how an issue becomes an issue on the agenda. Agendas can be distinguished between *formal* agendas, where issues receive serious attention from decision makers, as compared to the *public* agenda “which consists of issues which have achieved a high level of public interest and visibility” (Cobb, Ross et al., 1976: 126). In general terms an agenda can be defined as “the set of issues that are seriously considered in a polity” (Princen, 2007: 28). Theoretical frameworks for the analysis of agenda-setting were developed in the US context and are mostly interested in formal agendas (Cobb, Ross et al., 1976; Baumgartner and Jones, 1991; Kingdon, 1995 [1984]). Kingdon (1995) distinguishes between the ‘governmental agenda’ and ‘decision agenda’, where issues on the governmental agenda attract serious attention by decision-makers and issues on the decision agenda are up for an active decision by decision-makers.

The term ‘agenda building’, used in the early agenda-setting literature, can be defined as follows: “The process by which demands of various groups in the population are translated into items vying for the serious attention of public officials [...]” (Cobb, Ross et al., 1976: 126), and the basic interest is to “account for variation in the ways issues get on the agenda and in rates of success at achieving agenda status” (*ibid.*). In their model Cobb *et al.* (1976) distinguish between four stages in an issue career starting from issue initiation followed by issue specification and issue expansion until the

entrance to the formal agenda. These stages are different according to the underlying agenda-building process.

Three such processes can be distinguished: first, the outside initiative model where issues arise in nongovernmental groups; second, the mobilisation model where issues come from inside government and are very likely to become part of the formal agenda and decision-makers seek issue expansion from the formal agenda to the public agenda, e.g. for the purpose of implementation; finally, the inside initiative model where the issue also arises within the governmental domain, but is not intended to be expanded to the public agenda. In the latter case decision-makers aim to prevent expansion on the public agenda and seek instead “a more ‘private’ decision within the government” (Cobb, Ross et al., 1976: 135).

Before coming back to these models of agenda-building in the EU context, the following paragraphs will briefly present two major agenda-setting frameworks: Kingdon’s (1995 [1984]) Multiple Streams Framework (MSF) and Baumgartner and Jones’ (1993) Punctuated Equilibrium Theory (PET). It is these two theories that serve as the main theoretical basis for the analytical framework applied in the subsequent analysis. They are considered as robust analytical frameworks in this area of research because their concepts and propositions are relatively clear and have been used widely by scholars in the political science literature (Sabatier, 2007).

Kingdon’s Multiple Streams Framework

Kingdon’s MSF differentiates between governmental agenda and decision agenda, where issues on the governmental agenda attract attention within government and issues on the decision agenda are up for active decision as mentioned above. The MSF aims to explain why some issues make it to the decision agenda while others do not, and why in some cases alternative policies are considered and in others are not. It distinguishes between three independent streams or processes: problems, policies, and politics. These streams are captured by a number of variables. The problems stream includes focusing events and changing or new indicators (e.g. statistics), the policy stream is mainly concerned with new solutions and proposals, and the politics stream includes public opinion or administrative changes. Only if all three streams come together at one point in time, a policy window for an issue to make it to the governmental agenda opens.

According to Kingdon the initial step in terms of opening a policy window is usually caused by developments in the problem or politics stream – not in the policy stream (Kingdon, 1995 [1984]: 173f).

However, the opening of policy windows is necessary but not sufficient for change in the governmental agenda. Kingdon highlights the role of policy entrepreneurs for the coupling of the three different streams as a precondition for agenda and policy change. Policy entrepreneurs are defined as “advocates who are willing to invest their resources – time, energy, reputation, money – to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits” (Kingdon, 1995 [1984]: 179). Kingdon differentiates between different bureaucratic incentives for action, although in Kingdon’s framework the term ‘policy entrepreneur’ is not limited to bureaucrats but includes all advocates with an interest in the policy field. Bureaucratic incentives include material gains that can be linked to personal issues, such as maintaining or furthering one’s career, or to broader dimensions such as expanding administrative jurisdiction, purposive benefits that refer more to the values or beliefs of policy entrepreneurs, and solidary incentives which refer to the wish of being close to the power and where the decisions are taken as part of a team. To achieve one or all of these benefits, policy entrepreneurs need to use policy windows defined as “an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems” (Kingdon, 1995 [1984]: 165).

Whilst Kingdon’s framework has attracted much interest by policy analysts, it has been criticised for being not specific enough about the processes and for assuming that the three streams (problems, policies, and politics) are largely independent from each other (e.g. Zahariadis, 2007). The lack of detail makes it difficult to clearly distinguish between dependent and independent factors in the policy process and therefore to identify the causes for change. Its lack of specification and its strong emphasis on situational or temporal factors were identified as other shortcomings (Mucciaroni, 1992). Mucciaroni (1992) suggests four improvements to strengthen Kingdon’s MSF framework: first, to use it as a general framework to develop a more concrete proposition about the political and institutional conditions under which issues make it to the agenda or not; second, to include structural factors in the framework; third, to embed

agenda change in broader historical patterns; and, finally, to acknowledge the interdependence between the three streams.

Baumgartner and Jones' Punctuated Equilibrium Theory (PET)

In addition to Kingdon whose focus was on the question why an issue makes it to the decision agenda, Baumgartner and Jones' PET aims to explain policy change *and* stability. Instead of a general equilibrium in the policy process that leads to path dependency in the policy process, they argue for a punctuated equilibrium where stability “may be maintained over long periods of time by two major devices: the existing structure of political institutions and the definition of the issues processed by those institutions” (Baumgartner and Jones, 1993: 15). Issue definition is considered as the “driving force in both stability and instability” (*ibid.*: 16), also because it can mobilise new actors. Issue definition depends however on the political institutions in place. Stability is characterised by a negative feedback process where changes are refuted, while positive feedback processes through mobilisation and the entry of new participants contribute to the redefinition of issues. This can shift an issue to the ‘macropolitical agenda’ and cause large-scale policy change as part of a positive feedback process. Such a positive feedback process can be caused by a change in policy images and in institutional venues (Baumgartner and Jones, 1993).

Baumgartner and Jones (1991: 1045) define policy image as “the interaction of beliefs and particular values concerning a particular policy”. A favourable interplay between policy image and institutional venue can lead to policy subsystems that are highly favourable to a given industry or technology. However, policy images and venues can sometimes change quite rapidly as a consequence of issue re-definition as a result of mobilisation by new entrants and a positive feedback-process. Institutional (or policy) venues are defined as “institutional locations where authoritative decisions are made concerning a given issue” (Baumgartner and Jones, 1993: 32). They do not narrowly refer to formal institutions or a spatial dimension, but include informal institutions within or across formal institutions such as informal cross-departmental working groups. Furthermore, building on this definition, the concept can be applied to all relevant decisions that lead to the formal adoption of a policy. The perception of a certain policy image will depend on the institutional venue. Since each institutional

venue “has its own language, set of participants, and limitations” (True, Jones et al., 2007: 162) it affects the agenda-setting process and finally policy outputs.

Drawing upon Schattschneider’s (1960) work on conflict expansion in the policy process, Baumgartner and Jones introduce the concept of venue shopping. When policy entrepreneurs cannot reach their goals in a given policy venue, they try to expand or shift a policy issue from one policy venue to another in order to reach a venue that is more receptive to their policy objectives. The objective can be policy change or stability. The search for the appropriate policy venue is, however, complicated. “[N]one is inherently better than any other. Policymakers use manipulation of the understandings of policies as purposive tools in their search for the policy venue which will be most favourable to their interests” (Baumgartner and Jones, 1993: 36). To achieve issue expansion into new policy venues, actors need to justify why new venues should consider the issue in question. This can be achieved by using changing policy images.

Baumgartner and Jones (1993) argue that a new understanding or a new image for a given problem or solution is important for policy change. Moreover, they consider issue definition as “central to political processes in disequilibrium” (Baumgartner and Jones, 1993: 23) and therefore policy change. Furthermore, policy images are identified as important elements in expanding issues beyond a rather closed policy subsystem or policy monopolies. Policy monopolies have a clearly defined institutional structure that limits access to the policy process, and a powerful supporting idea associated with the institution, ideas that are often related to core interests of political systems (e.g. economic growth) (Baumgartner and Jones, 1993). As Baumgartner and Jones (1991: 1049) put it: “The degree to which problems are tightly linked to images is related to the degree to which a single arena of policymaking exerts monopolistic control over a policy”. The entrance of new participants with their values, beliefs and interests in the policy process often affect the issue definition and the policy image.

Of similar importance is the definition of alternatives – alternative problem definitions or alternative solutions to the problem. In his seminal work Schattschneider concludes that “the definition of the alternatives is the supreme instrument of power [...] because the definition of the alternatives is the choice of conflicts, and the choice of conflicts allocates power” (Schattschneider, 1960: 66). Subsequent studies suggest the distinction

between three levels of political conflict (Baumgartner, 1989): first, the existence of a problem; second, the best solution for a problem; and, finally, the best means for implementation. At each level of conflict (re-)definition plays an important role in enabling and restricting participation (Rocheft and Cobb, 1994). Yet, Baumgartner's analysis of nuclear power in the US and France shows that there is not necessarily a conflict over problem definition (Baumgartner and Jones, 1991). The socio-political and institutional context is an important component as well. In some cases dominant values or rules exclude alternative problem definitions (Bosso, 1994: 198f).

Despite being "an excellent and theoretically well informed" (John, 1998: 182) analytical framework, John identifies three shortcomings of PET: first, the approach is mainly descriptive that suggests associations but less causal relationships; second, it assumes a 'bottom-up' approach where people from the outside can influence the agenda-setting process and thus the policy outcome, while neglecting the influence of political decision-makers on the agenda and policy outcome; finally, it does not capture changes outside the studied policy sector that initiate change.

Both agenda-setting frameworks, MSF and PET, have been developed in the context of the US political system and they have been mostly applied to national policy process and contributed to a better understanding of national policy-making. MSF was used to explain agenda-setting in British telecommunications and rail sectors (e.g. Zahariadis, 1992; Zahariadis, 1996). PET became subject of a large research programme since the early 1990s, using longitudinal data collections to explain policy change and stability with a more recent interest in comparative agenda analysis (John, 2006).¹⁰

3.2.4 Alternative frameworks for policy analysis

Besides MSF and PET, different theoretical frameworks have been developed in the public policy literature to analyse policy change (for a recent overview see for example Sabatier, 2007). Major alternative theoretical frameworks include the Advocacy Coalition Framework (ACF) and Policy Network Analysis (PNA).

ACF, originally developed in 1988 (Sabatier and Jenkins-Smith, 1988), has since then been frequently used for the analysis of environmental and energy policy (for an

¹⁰ For more information on the Policy Agendas Project see <http://www.policyagendas.org/>.

overview see Sabatier and Weible, 2007). It was also put forward as useful tool to analyse EU policy process (Sabatier, 1998). Key to policy change in the ACF framework are exogenous perturbations that change resources and beliefs among different advocacy coalitions. Policy brokers need to exploit such opportunities for policy change. The ACF framework was applied to various EU policy processes in different policy fields and was considered a useful framework (e.g. Radaelli, 1997; Dudley and Richardson, 1999; Nedergaard, 2008)¹¹. However, Radaelli (1997) argues that it does not pay enough attention to endogenous elements of change in the EU policy process. Although the ACF framework has been revised and the role of internal process and the role of policy entrepreneurs acknowledged, its focus is still on stable advocacy coalitions over a long period of time, and change is mainly stimulated by external shocks, policy-oriented learning or “hurting stalemate” (Sabatier and Weible, 2007: 208). While external perturbations have been crucial in the development of EU energy policy in the past, it is assumed here that internal EU policy dynamics play an equally important role. Furthermore, the institutional dimension seems to be not sufficiently considered in the ACF framework, which has been proved as an important factor in the EU policy process as the literature on EU energy policy-making (3.4.2) shows.

PNA attracted increasing attention among scholars of EU studies in the 1990s when the transnational dimension of EU politics was increasingly acknowledged. PNA was considered as a useful analytical tool because the EU is not composed of typical institutions providing bargaining opportunities to different kinds of actors, and because policy formulation is of central importance for policy outcomes (Peterson, 1995a).¹² In addition PNA should allow the consideration of various levels and actors involved in EU politics (Risse-Kappen, 1996). PNA puts particular emphasis on resource dependencies among different actors and has often been used in the analysis of EU policy-making (Richardson, 2006).

However, the arguments put forward in support of PNA can equally be applied to the other frameworks of public policy analysis. One major shortcoming of PNA is that it is

¹¹ Hirschl (2008) applied the ACF framework to EU RES policy-making within a multi-level policy analysis of German RES policy.

¹² For a comprehensive discussion of different conceptions of policy networks in EU studies see Börzel (1998), for a more recent discussion on the role of networks in EU governance research see Börzel and Heard-Lauréote (2009).

more of a descriptive tool used to identify relationships between key players in the policy processes and nodes in these networks, without allowing the identification of clear causal linkages between the identified networks and the developments in the policy outcomes (John, 1998). In the EU context, PNA was criticised for not being able to fully grasp the fluidity and fragmentation of EU policy-making, for not taking into account the institutional complexity of the EU that affects EU decision-making and for the difficulty in setting clear boundaries (Kassim, 1994)¹³.

To summarise, on the basis of this brief review of frameworks for the analysis of public policy, this thesis puts agenda-setting frameworks in the centre of its analytical framework. The above review of MSF and PET suggests that both frameworks are complementary. Each of them provides concepts that can help in the analysis of EU policy-making processes. As will be discussed in the next section, more recently agenda-setting frameworks have been put forward as useful tools for the analysis of EU policy-making and applied systematically to EU policy processes. These studies indicate that this analytical perspective can be a promising approach to improve our understanding of the dynamics of EU policy-making. Kingdon's MSF fits well with the EU policy process, in particular with respect to the role of policy entrepreneurs who need to use policy windows to achieve formal agenda status. PET adds other important concepts: the role of institutional venues and the influence of the dominant policy image or issue definition for policy change and stability. By emphasising the role of new entrants PET reinforces the role of policy entrepreneurs in EU agenda-setting.

3.3 A framework for analysis of EU policy processes

As Richardson (2006: 25) underlined "the complexity of the EU policy process means that we must learn to live with multiple models and learn to utilise concepts from a range of models in order to help us describe it as accurately as possible". In order to respond to this challenge this section develops an analytical framework that integrates central concepts of the agenda-setting literature as reviewed in Section 3.2.3, and includes additional insights from EU studies in relation to the four central concepts of the framework: contextual factors, policy entrepreneurs, issue definition, and venue shopping.

¹³ For a reply to Kassim's critique on PNA see Peterson (1995b).

3.3.1 *EU agenda-setting research*

In the EU context agenda-setting is a rather new strand of research which could make several contributions to EU studies in general (Princen, 2007: 22): a better understanding of EU policy-making, possibly identifying structural biases in the EU policy-making process, and finally providing insights into the EU integration process. This thesis aims to contribute to a better understanding of EU energy policy-making by using an agenda-setting framework. According to Princen (2007: 34) EU agenda-setting is different from domestic agenda-setting in three ways: the role of public mobilisation is limited; the EU's limited jurisdictional basis as compared to nation states makes it more difficult to get certain issues on the EU agenda; and the EU decision-making process requires strong majorities to have a proposal passed.

Most studies that have used agenda-setting approaches to EU policy processes applied rational choice models to analyse the relationship between EU institutions and Member States and their respective influence on EU policy-making (Pollack, 2003), or focused on the role of individual EU institutions within the agenda-setting process (Jones and Clark, 1999; Schmidt, 2000; Tallberg, 2003; Burns, 2004). These studies indicate that an agenda-setting perspective can be a useful tool to improve the understanding of policy change in the EU (Princen and Rhinard, 2006; Princen, 2007). In EU policy making, with its many actors, complex procedures, and multiple veto points, agenda-setting powers are “extremely important” (Hooghe and Marks, 2001: 21). The above discussion has shown that the US focus of the agenda-setting frameworks requires adapting these to the particular features of the EU policy process.¹⁴

Overall the EU agenda-setting process is quite complex due to its transnational nature and the wide range of state and non-state actors involved in the EU policy process (Mazey and Richardson, 1993). Only a small number of scholars have explicitly worked on EU agenda-setting research. Princen and Rhinard (2006) applied the existing US focused agenda-setting literature systematically to EU policy-making. They argue that out of the three models of agenda-building processes suggested by Cobb *et al.* (1976) (see 3.2.3) only two are suitable models for the EU policy process: the ‘outside

¹⁴ It is worth noting that strictly speaking there is no EU agenda, but each EU institution will follow its own agenda. Although it is important to keep this difference in mind for the empirical analysis, for the purposes of theorising agenda-setting processes it can be assumed that there is one overall political agenda in the EU (Princen, 2007: 29).

initiative' model and the 'inside initiative' model. According to Princen and Rhinard (2006) the third model called 'mobilization model' is not applicable due to the fact that public involvement in EU decision-making is considered as very limited. The EU lacks a general public and therefore the pre-condition for public mobilisation. While 'Western' national political systems provide structural features that enable public mobilisation, i.e. a public space for the exchange of ideas and problems mainly with the help of media and often based on a common language or symbols, the EU policy system does not provide these structural features for public mobilisation. There are, for instance, 23 official languages and the media are still strongly linked to geographical, political or cultural borders. As a consequence, it can be expected that EU decision-makers are less prone to use expansion to the general public as a means to gain agenda access. Princen argues that "EU decision-makers are [...] much less likely to be vulnerable to public mobilization than domestic decision-makers" (Princen, 2007: 31).

Addressing the particularities of EU policy-making, Princen and Rhinard (2006) argue that, in the case of the EU policy-making process, it is more useful to distinguish between high and low politics as two agenda-setting routes. 'High politics' is more political (e.g. issue initiation by the European Council) as compared to 'low politics' which is more technocratic (e.g. issue initiation by low-level officials or expert communities).¹⁵ Both routes are assumed to follow the four stages of an issue career: initiation, specification, expansion and entrance. Depending on how the issue is initiated they distinguish different characteristics for each stage in the issue career. In the high politics route political leaders initiate an issue due to a politically salient event and they formulate political consensus on an EU response in the European Council. This consensus is then expanded towards lower levels of decision-making in the EU and political momentum eventually results in the entrance to the formal agenda. By contrast, a low politics agenda-setting route is initiated out of professional concerns by expert

¹⁵ The distinction between high and low politics in European integration studies was first introduced by Stanley Hoffmann in the 1960s (Hoffmann, 1966). 'High politics' referred to issues that were closely related to the very existence of the states including defence, foreign policy, law and order – policy areas where Hoffmann questions functional integration theories as opposed to 'low politics' such as economic policy. By contrast, in Peterson and Bomberg (1999) 'high politics' refers to "history-making" decisions by political leaders at the level of EU summits, as compared to "policy-setting" decisions at the systemic level in inter-institutional bargaining between the Council and the EP, as well as "policy-shaping" decisions at the sub-systemic level between the Commission, Council working groups and EP committees. In the agenda-setting context the term 'high politics' is closer to Peterson and Bomberg's definition in that it refers to decisions taken by heads of state and government at European summits.

communities. Proposals are elaborated by expert groups, and then expanded towards higher political levels that might eventually build sufficient impetus – ideally a “point of no return” (Princen and Rhinard, 2006: 1122) – to achieve entrance to the formal agenda. Although called expert communities, it is important to note that experts in most cases represent certain interests and are not ‘neutral’ players in the policy process (see also 3.3.3). Table 1 summarises the main characteristics of both agenda-setting routes.

Table 1: Characteristics of two agenda-setting routes

Stage in issue career	High politics route	Low politics route
<i>Initiation</i>	By political leaders due to politically salient event	Out of professional concerns in epistemic communities
<i>Specification</i>	Formulation of political consensus on an EU response in the European Council	Formulation of specific and technical policy proposals in Expert Groups and Working Parties
<i>Expansion</i>	Towards lower levels of decision-making in the EU	Towards higher levels of decision-making in the EU
<i>Entrance</i>	By creating political momentum	By gradually building impetus

Source: Princen and Rhinard (2006: 1122)

Based on this heuristic, Princen and Rhinard formulate two expectations for the subsequent policy process. First, institutional structures strongly influence the framing of new proposals and the existence of multiple EU venues can lead to different issue specifications. Second, “in the expansion stage, the complexity of EU institutional structures will offer opportunities for actors to steer proposals into certain venues, and to call upon sympathetic expert communities to build support” (Princen and Rhinard, 2006: 1123). The results of their empirical analysis show that high politics initiation processes can reinforce each other, while low politics initiation can get stuck in the agenda-setting process. Low politics initiatives need to confront high politics including intergovernmental bargaining and public salience effects. On the other hand, high politics initiatives have to face bureaucratic dynamics and institutional venue choice at the level of low politics. A dynamic interaction and intersection of the two processes can be expected and can lead to the blockage of the agenda-setting process favouring incremental policy change. If “common frames, like-minded actors and sympathetic venues” (Princen and Rhinard, 2006: 1130) emerge, more radical policy change appears

to be possible. This strongly reflects key concepts of the agenda-setting frameworks discussed in section 3.2.3.

The analytical framework used in this thesis follows Princen and Rhinard's (2006) basic distinction between 'low politics' and 'high politics', as well as the common distinction in the agenda-setting literature of an issue career: initiation, specification, expansion, and entrance. By doing so, the framework allows the testing of two assumptions as suggested by Princen and Rhinard. First, it can show if issue initiation at the level of low politics offers opportunities for policy entrepreneurs to steer proposals into certain venues favourable for their policy objectives. Second, it can be tested if issue initiation at the level of high politics helps to overcome administrative inertia, or whether political momentum is lost as soon as political salience¹⁶ disappears.

Given the high political salience of energy and climate change issues during the time period analysed, public opinion might have played a role in the analysed agenda-setting and decision-making process. Recent contributions to European integration studies point to the increasing politicisation of European integration since the early 1990s, and the role of public opinion in European integration (Börzel and Risse, 2009; Hooghe and Marks, 2009; Schmitter, 2009). This questions Princen and Rhinard's view that there is low mobilisation inside the EU which would include public opinion as one element of public mobilisation.

Both the agenda-setting frameworks discussed above and the EU agenda-setting research point towards four key elements in the analysis of agenda-setting processes: contextual factors, policy entrepreneurs, issue definition, and venue shopping. For the purpose of the operationalisation of these concepts for the empirical analysis, the remainder of this section discusses each concept in the context of EU policy-making.

3.3.2 *Contextual factors*

All agenda-setting frameworks discussed in Section 3.2.3 point implicitly or explicitly to the influence of contextual factors on the policy process. Most explicitly, Kingdon's

¹⁶ Political salience is defined here as the level of political attention paid to an issue that can be reflected in political statements by individual policy-makers, communications by the Commission or conclusions by the Council and European Council. In the political science literature the term "salience" was originally used by voting behaviour scholars to indicate the importance individual voters attach to different issues (Wlezien, 2005).

MSF refers to factors such as focusing events¹⁷ (problems stream) or public opinion and administrative change (politics stream). Contextual changes can open a policy window that policy entrepreneurs can, in turn, exploit to put an issue on the agenda (see 3.2.3). Various case studies about policy change in the EU confirm the influence of contextual factors on the EU agenda. Rising unemployment and economic downturn prevented progress in social policy (Wendon, 1998) or gender equality rights (Mazey, 1998), but stimulated progress in tax reforms (Radaelli, 1995).

3.3.3 *Policy entrepreneurs*

The role of policy entrepreneurs in the agenda-setting process has been highlighted at various points in this chapter. Policy entrepreneurs aim for policy change or stability according to their future anticipated gains (Kingdon, 1995 [1984]). They are interested in “selling ideas designed to bring about dynamic policy change” (Mintrom and Vergari, 1996: 423). For this purpose policy entrepreneurs need to identify problems and build coalitions; problems need to be defined in a receptive way to relevant target audiences; strategies need to be developed to build coalitions around certain problem definitions by pre-testing problem definitions and by adapting them accordingly (*ibid.*). In the absence of strong or well-prepared policy entrepreneurs to size a policy window in the case of focusing events or venue change, policy change is unlikely to materialise (Pralle, 2006).

In the specific EU institutional context of the subsequent analysis, key policy entrepreneurs are representatives from the Commission, the Council and Member States, the European Parliament (EP), industry and NGOs “who are willing to invest their resources – time, energy, reputation, money – to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits” (Kingdon, 1995 [1984]: 179). Institutional actors cannot be regarded as single policy entrepreneurs. Instead, organisational units or individuals representing these organisations can act as policy entrepreneurs pushing for their policy objectives.

No single policy entrepreneur can be put in the central position in EU agenda-setting. Different views persist in the literature on how the EU’s institutional setting and policy-making procedures affect agenda-setting and decision-making. Majone (2006) argues

¹⁷ On the particular role of focusing events in agenda-setting see Birkland (1998).

that the EU is a typical example of agenda control similar to that found in the US legislative system, particularly the role played by congressional committees. From this perspective the Commission enjoys a formal monopoly of agenda-setting due to its monopoly of legislative initiation in the EU system (Art. 211 TEC). By comparison, others argue that in contrast to the US with the Congress as the focal point for policy entrepreneurs' action, the European level does not have an equivalent since "the EU's supranational institutions enjoy no monopoly on informal agenda setting, which depends more on expertise and persistence than on the formal right to propose or amend policies" (Pollack, 2003: 51).

Following Pollack's argument that takes informal norms into account, the concept of agenda-setter and the role of policy entrepreneurs have to be applied to a broader set of actors. This includes not only the three EU institutions directly involved in the decision-making process, i.e. the Commission, the Council of Ministers and the European Council (including Member States), as well as the EP, but also other players with an interest in the policy area. Eising argues that "the EU organizations are largely restricted to agenda setting and policy formulation" (Eising, 2002: 89). While according to Eising none of the EU institutions has "complete control" over the "policy agenda", he puts the Commission in "a central position in the phases of agenda setting and policy formulation" (Eising, 2002: 102).

European Commission

With respect to the Commission's role as policy entrepreneur, Laffan summarises that "the Commission is in a position to take advantage of opportunities as they present themselves in the policy process to enhance policy integration and collective solutions to policy problems" (Laffan, 1997: 424). Legislative initiation – as opposed to policy initiation – and drafting of new legislation is the sole responsibility of the Commission.

The Commission's right of initiative was however affected by formal and informal changes over time that have increased the Council's and EP's influence on agenda-setting (Rasmussen, 2007: 247-51). In general, Commission proposals are not drafted 'secretly' within the Commission but in consultation with key actors in the decision-making process such as the Council and the EP. In addition, both the Council and the EP can invite the Commission to produce proposals (Art. 208 and Art. 192 TEC

respectively). Furthermore an increasing number of adopted proposals include deadlines for new or follow-up proposals.

Another important development that modified the Commission's formal right of initiative has been the increasing role of the European Council in setting long-term strategic goals, putting the Commission in "a more bureaucratic role of fulfilling the Member States' agenda" (Rasmussen, 2007: 250). Actors' influence on the policy process depends also on the stage of the policy process. During the conciliation procedure between the Council and the EP under co-decision procedure the Commission's influence is rather low due to the Council's general search for unanimity that allows them to depart from the Commission's initial proposal.¹⁸

Thus, "policy initiation in the European Union is a multi-actor activity" (Hooghe and Marks, 2001: 14). Nugent notes that policy initiation takes place at all levels of the EU policy process, and the "Commission – important though it is – does not have a totally free hand in what it does" (Nugent, 2006: 167). From very early on in the policy process the Commission needs to take into account outside voices to increase the chances for success of a policy initiative. Despite its institutionally strong role in legislative initiation and drafting, Commission officials have rather limited control over the subsequent decision-making process. They need to act as policy entrepreneur and assess their proposal against dominant positions and build winning coalitions within the Council and the EP. An extensive network of informal and formal advisory committees and working groups for consultation provide the Commission with access to independent information and legitimacy¹⁹ (Marks and Hooghe, 1996: 359). This can help align the Commission's and outside actors' positions and thus create strong majorities among key actors at the early stage of the policy process.

Wendon (1998) underlines the importance of the Commission's role as policy entrepreneur in the context of a legally weak position such as in social policy where the

¹⁸ Unanimous support in the Council is necessary to accept amendments with which the Commission does not agree. Furthermore the Commission can amend, or even withdraw, proposals at any time of the policy process under the consultation, cooperation and co-decision procedures, except of the third stage of the co-decision procedure, i.e. the conciliation procedure. For an overview see Nugent (2006: 398-414).

¹⁹ Legitimacy refers to the justification and acceptance of political power. Legitimacy can be based on processes and norms in a given political system (Mandt and Kaase, 1998). In general terms legitimacy in politics can be defined as "The property that a regime's procedures for making and enforcing laws are acceptable to its subjects" (WG, 2009).

EU does not have an explicit competence to act. Commission officials are therefore at the same time a target for policy entrepreneurs (interest groups) and policy entrepreneurs themselves “by identifying policy problems, proposing and selling policy proposals and brokering compromises” (Wendon, 1998: 344). Wendon underlines the importance for the Commission to connect policy images to problems in a convincing manner in order to overcome Member States’ opposition. Hennessy’s (2007b) analysis of the Commission’s role as agenda-setter in the case of pension fund reform shows that an effective agenda-setting tool was the elimination of particularly controversial issues from the negotiation process, e.g. taxation which was eventually “organized out” of the agenda. The Commission should however not be regarded as a monolithic agenda-setter but as consisting of “frame entrepreneurs” (Nylander, 2001: 293) from different DGs or units.

The Commission’s appeal to the European Court of Justice (ECJ) can play a particular role in helping the Commission as policy entrepreneur also to expand and maintain its competences against explicit opposition from the Council (Tömmel, 2008b). Legitimacy based on public concerns as well as the support by the EP and EESC can be important elements for the Commission to overcome opposition against policy proposals (Pallis, 2006). Moreover, Pallis shows how a consensual approach, instead of an ‘ideology driven’ approach, by the Commission can help reach agreement. In the case of EU maritime policies the Commission successfully used a strategy of “selective agenda-setting” that responded to the lack of progress at international level or the insufficient implementation of international rules in EU Member States. Overall the Commission took a “multi-directed consensus-building role” (*ibid.*).

To sum up, “the Commission’s leverage on setting the agenda depends on its ability to anticipate and mediate demands, and its capacity to employ expertise derived from its role as the think tank of the European Union” (Hooghe and Marks, 2001: 16).

Council of Ministers and Council Presidency

The Council of Ministers – and increasingly so the European Council – plays a particularly important role in EU agenda-setting as reflected in the high politics agenda-setting route suggested by Princen and Rhinard (see 3.3.1). Although the Commission is the formal agenda-setter when it comes to new legislative proposals, the Council can

invite the Commission to prepare reports or legislative proposals as mentioned above. Furthermore, the Council Presidency is technically responsible for the agenda of individual Council meetings in its various formations, including the Council's working parties (Hayes-Renshaw and Wallace, 2006). This means that Member States who hold the Presidency have particular influence on the formal EU agenda.

Setting the agenda is a key institutional power for Council Presidencies to put forward their pet issues (Tallberg, 2008). Tallberg (2003) argues that the Presidency's powers have often been underestimated due to an overemphasis on agenda-setting understood as the launch of new political initiatives. Tallberg therefore introduces the term "agenda-shaping" as a conceptual category that includes agenda-setting, agenda-structuring and agenda-exclusion. Agenda-structuring refers to the influence on the attention an issue already on the agenda attracts, whereas agenda exclusion stands for the omission of issues from the policy agenda. The Presidency can contribute to agenda-setting by raising awareness to new policy problems, by developing concrete proposals for action, or by developing new institutional practices. Agenda-structuring can be achieved by determining the frequency of meetings within a policy area, by arranging informal meetings, and by the structure of actual meeting agendas. Finally, exclusion from the agenda can be achieved by just not dealing with a topic, by removing it from the decision agenda, or by tabling unacceptable compromise proposals.

Nugent (2006) highlights the mutual dependence between the Commission and the European Council. Not only does the European Council sanction policy initiatives, but the Commission uses this forum to legitimise its own policy preferences.

EP

The EP has considerable agenda control under the co-decision procedure, but has very limited influence under the consultation procedure. While the former is normally used for renewable energy policy proposals, the latter is applicable under Euratom (see 2.3). However, Jones and Clark (1999) argue that, even under the consultation procedure, the EP can have an important role in agenda-setting if they and the Commission reach agreement or "interlock" to build a united front. The Commission can then use the position agreed between the EP and the Commission in dealings with the Council. Power of delay and informal contacts can be used by the EP to exert influence in the

policy-setting stage (Jones and Clark, 1999: 131f). Other important elements include the rapporteur's and EP committee's relationship to the Commission. The rapporteur can play an important role to align the EP's agenda with the Commission's agenda – or create divergence. Another instrument available to the EP to put an issue on the agenda is the publication of own-initiative reports under Art. 192 EC Treaty, and thus “request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty”. Since these own-initiative reports need to be backed by an absolute majority of MEPs, it can be a powerful instrument for the EP. The EP's environment committee successfully used this instrument to shape the EU's environmental agenda (Judge, 1992).

Interest groups

Interests groups constitute another army of potential policy entrepreneurs who aim to influence EU policy processes according to their policy objectives. Greenwood argues that “the most striking feature about the system of interest representation in the [...] EU is its degree of institutionalization” (Greenwood, 2007: 1). Interest groups play a particular role in EU decision-making since they can provide output and input legitimacy of EU public policy.²⁰ Interest representatives can use the national level or the EU level to put forward their position in the EU decision-making process (*ibid.*). Like the Commission, interest groups use ad hoc coalition building to put forward their interest in the policy process (e.g. Mazey and Richardson, 1997). Factors that influence the success of interest groups include control of key information, adequate resources as well as their economic and political weight (Nugent, 2006: 313ff).

There is no straightforward classification of EU interest groups, although Greenwood (2007), for example, distinguishes between groups and non-groups, on the one hand, and between business, professional, labour, citizen, and territorial interests, on the other. Another possible distinction is between producer and diffuse interest groups. Whilst producer interest groups seek to export their national standards to other Member States, diffuse interest groups defend collective interests held by large numbers of individuals including environmental protection (Pollack, 1997).

²⁰ “[...] *output* legitimacy of EU public policy [is] concerned with the supply of information, ideas and expert resources for the technical quality of such policies, and the legitimacy which derives from *inputs* [is] concerned with the support for public policy deriving from the ability to participate in it and confidence in the means used to formulate and implement it. [italics in original]” (Greenwood, 2007: 1).

‘Experts’ or ‘professionals’ can be part of any of these interest groups and therefore of interest representation in EU policy-making. This is particularly true when expert groups are used to prepare legislation (Greenwood, 2007: 34) and thus influence the formal decision agenda. Experts are then among the relevant stakeholders with their own interests and objectives in the policy process.²¹

3.3.4 *Issue definition and framing*

Issue definition²² is important at all stages of an issue career within the agenda-setting process because it predetermines possible solutions to the problem and influences the access of actors to the decision arena (Baumgartner and Jones, 1993). The chances of a problem attracting the attention of particular political institutions which all have different selection procedures will be influenced by problem definition (Weiss, 1989; Rochefort and Cobb, 1994).

While problem definitions pre-determine possible solutions, actors’ access, and the institutional framework within which the problem is dealt with, they do not necessarily include a solution to the problem, and they do not set clear institutional rules about the inclusion or exclusion of specific actors in the agenda-setting process. By contrast, framing²³ does fulfil these functions. It includes problem definition, a solution to the problem, rules about who should be involved in the subsequent policy process, and a justification for action. The latter is particularly relevant at the EU level since every action at the EU level needs to be very well justified in order to overcome resistance by Member States, including various national actors (Princen, 2007). Thus it is not only

²¹ An epistemic community can be another route for experts to influence agenda-setting and thus policy stability and change. An epistemic community can be defined as “a network of professionals with recognized expertise and competence in a particular policy domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area” (Haas 1992: 3). This strand of research is mainly interested in the role of scientific information in policy process, and the mechanisms by which new ideas and knowledge about certain problems enter the policy arena and thus influence policy-making.

²² In the literature, issue definition and problem definition are often used interchangeably. It has been argued that issue definition is a more appropriate term in lieu of problem definition since it allows for the distinction between political issues that are defined as problems and those that are not (Daviter, 2007).

²³ Framing can be defined as “[...] a way of selecting, organizing, interpreting, and making sense of a complex reality so as to provide guideposts for knowing, analysing, persuading, and acting. A frame is a perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted upon” (Rein and Schon, 1991: 263). Frames used in the policy process can reveal causal relations that actors establish between particular policy proposals and policy problems. Thus the major aim of frame-critical analysis is to identify the underlying assumptions of actors or advocacy groups in the policy process, which allows them to put certain policy proposals on the governmental decision agenda. Framing studies are predominantly based on discourse analysis.

institutions in general that “structure debate, determine access to decision making and constrain policy choices, but, also, problems themselves and the development of ideas for their solution are significant constraints on the degree of choice which policy actors possess” (Mazey and Richardson, 1997: 111).

A problem definition or issue expansion that enables agenda access can however at the same time hinder a problem definition that leads to the adoption of the intended policy (Dery, 2000). Broad framing can aim to build consensus by consulting interests, and narrow framing can restrict interest groups’ access to the policy-making process (Nylander, 2001). In his analysis of EU electricity market liberalisation, Nylander (2001: 310) points at the importance of a “master frame”: “skilful policy entrepreneurs are able to frame issues in congruence with master frames in innovative ways, and they are able to build coalitions so that deadlocks can be broken”. Policy entrepreneurs need therefore to link their arguments to the dominant “master frame” in a given policy area.

Analysing the role of policy frames in the development of EU environmental policy, Lenschow and Zito (1998) suggest that the extent to which policy frames impact upon policy outcomes depends also on the degree of their institutionalisation analysed in terms of the organisational, procedural and normative structure. Organisational and procedural structures are mainly reflected in the organisational characteristics and institutional rules, whereas normative structures can be derived from policy instruments and the rhetoric used. It was, for example, shown that framing of environmental regulation as a contributor to competitiveness was not only important to gain the ‘external’ support by Member States and the public, but also to achieve ‘internal’ support from other DGs and within the college of Commissioners (Lenschow, 2005). A crucial element in the agenda-setting process is therefore not the objective problem load (e.g. air pollution) but a plausible definition of the problem and the dominant policy image (Jann and Wegrich, 2007: 46).

3.3.5 Institutional venues or ‘venue shopping’

The importance of strategic framing of an issue is closely related to the institutional venue (Princen and Rhinard, 2006). Venue choice is strongly related to issue framing because an issue frame can influence which venue is assigned to an issue, and a venue

can influence how an issue is considered (Baumgartner, 2007). In this context Baumgartner and Jones introduced the concept of ‘venue shopping’ (see 3.2.3).

‘Venue shopping’ is here defined as “[...] finding a decision setting that offers the best prospects for reaching one’s policy goals” (Pralle, 2003: 255). It assumes that policy entrepreneurs look for policy arenas where they see an advantage over their political opponents due to institutional rules, norms or procedures. The importance of the ‘right’ institutional venue is also underlined by a limited “agenda carrying capacity of any institution” (Birkland, 2007: 65). Consequently, policy entrepreneurs need to “compete with each other to get their issues and their preferred interpretations of these issues on the agenda” (*ibid.*). The prospect for success might also depend on the available capacity to put things forward on the agenda. In times of strong demand initial agendas need to be crowded out when it comes to concrete policy proposals.

‘Venue shopping’ can be understood in two different ways in the context of EU policy-making: first, from a multi-level governance perspective (see 3.2.2) sub-national and national actors can use EU level processes to reach policy objectives that are not achievable at the national level (Mazey, 1998; Princen, 2007); second, as the choice between different institutional venues at the EU level. In his literature review on agenda-setting research in the EU Princen (2007) argues for a venue approach as a general starting point for further research in this area. It has also been identified elsewhere as an important factor in the EU context (True, Jones et al., 2007). In general multiple access points for policy entrepreneurs in the EU system (Peters, 2001) point to the importance of strategic venue choice in EU policy-making.

Since policy entrepreneurs cannot be entirely sure from the start how policy proposals are perceived in certain venues, ‘venue shopping’ needs to be understood as “a trial-and-error process or an evolutionary search” (Baumgartner and Jones, 1991: 1048). Strategic issue expansion into other venues can be of particular relevance in the EU system where the use of issue expansion via the mass public is very limited. Pralle (2003) argues that policy entrepreneurs are not always rational in choosing an institutional venue and opt for change when this seems irrational. Furthermore they opt for a particular venue not only to advance a certain policy goal but also to comply with or support organisational needs. Finally, Pralle’s study indicates that policy learning

might change venue shopping strategies over time. She concludes that not only formal opportunities as found in political and institutional environments play a role in venue shopping, but also belief systems of advocacy groups and their ability of information processing and policy learning. New venues can serve as locus of learning in the framework of deliberations on problem-solving and best practices (Hennessy, 2007b).

The usefulness of the venue shopping concept has been demonstrated in the context of EU agricultural policy (Sheingate, 2000). Policy entrepreneurs aiming for stasis or change in a policy area try to choose the appropriate institutional venue where they see the highest chance of achieving their initial objective. This will depend on the formal rules (e.g. legal decision rules such as unanimous or majority voting) and participants' interests, values and beliefs. The Council's vertical differentiation in terms of different arrangements from technical working groups to the European Council can help to overcome "issue specific rigidities" (Eising, 2002: 115) by shifting negotiations to higher political levels which are more likely to reach political compromise.

From the Commission's perspective, one way of applying the concept of venue change to achieve its policy objectives is to create new institutional venues by using process legislation. Cram showed that by the use of process legislation the Commission succeeded in establishing "an alternative set of institutions capable of making legislation" (Cram, 1993: 343). Institutional venue does therefore not only apply to the permanent institutions such as the Commission, Council or the EP with their subordinate institutions such as Council formations (including COREPER – the Committee of Permanent Representatives) and EP Committees, but also to 'softer' institutions such as ad hoc working groups.

In addition, from the Commission's perspective the establishment of institutional fora can serve informational and legitimacy aims. In policy domains with high political salience institutional fora can restrict actors' access and thus help to provide better information from lobbyists to decision-makers; in highly technical policy areas with low political salience they can ensure high quality of information and thus improve the informational basis for policy-making (Broscheid and Coen, 2007). Broscheid and Coen conclude that the Commission has learnt to manage the process as "political entrepreneur", i.e. "institutional engineering in the service of political entrepreneurship"

(Broscheid and Coen, 2003: 180f). Although expert groups do not have political authority to take decisions, their technical authority can make it difficult for political actors to reject or seriously question their conclusions (Gehring, Kerler et al., 2008). Using the example of the Commission's Consultative Committee system, Mahoney (2004) shows that EU institutions can use formal arenas of policy debate to select certain interest groups that are "most in-line with its agenda" (Mahoney, 2004: 462).

The analytical interest here is the effect of such institutional fora on the policy process in terms of agenda-setting and decision-making dynamics. Previous research on institutional fora has overwhelmingly focused on formal institutions under the comitology procedures or their implications for the 'democratic deficit' (Pollack, 1994). It is assumed that political entrepreneurship or 'institutional engineering' at the EU level is not restricted to the Commission but can equally be used by other players such as the Council.

3.4 Analysing European energy policy

After having reviewed the agenda-setting literature and its relevance to EU policy-making, this sub-section shows why an agenda-setting framework is appropriate for the analysis of EU energy policy-making. It first briefly outlines the particular challenges for energy policy analysis in general, and then reviews previous studies on EU energy policy.

3.4.1 Energy policy analysis

For the purpose of the analysis of EU energy policy-making, energy policy is defined as follows: "Energy policy is concerned with the coal, electricity, gas and oil industries, as well as newer technologies such as nuclear power, renewable energy and activities to enhance the efficiency of energy supply and consumption" (McGowan, 1996a: 132). McGowan argues that "any attempt to define 'energy policy' more analytically runs into all the problems associated with the word 'policy'" (*ibid.*). Since energy policy deals with energy sources and technologies, specific challenges arise.

Energy policy is heavily path-dependent due to huge capital assets, long lead-times of investments, and dominance by a few incumbent players that have often been publicly owned with close links between government and industry (Kitschelt, 1983). Technical and institutional components of the energy system are heavily interdependent, and

changes in one component often require adaptations in other parts of the system (Hughes, 1983; Mayntz and Hughes, 1988). Institutional barriers for change include administration or values of the key players involved in the policy process (Mez and Midttun, 1997). This ‘lock-in’ of the energy system into a complex set of technical, institutional and ideational factors constitutes a particular challenge to introduce deliberate policy change (Unruh, 2000; Scrase and MacKerron, 2009).

Despite the importance of these structural features of energy policy and their ramifications for the introduction of policy change in the ‘making’ of energy policy, the majority of energy policy studies provide an analysis *for* energy policy. These studies identify specific policy solutions to solve a given problem (e.g. energy insecurity, climate change) or to achieve a given objective (e.g. energy security, competitive energy markets or sustainability) and are often based on economic perspectives (e.g. Helm, 2007). Although they may provide a thorough analysis of the problems and the solutions, they regularly ignore the underlying policy processes that prevent or enable the intended policy outputs and outcomes. An analysis *of* the energy policy process is therefore an important pre-condition for an analysis *for* policy change. This is the major objective of this thesis by shedding light on EU energy policy-making and thereby addressing a major research gap in energy policy related EU studies.

3.4.2 *Previous studies on EU energy policy*

This literature review concentrates on studies that include an analysis of EU energy policy decision-making processes and neglects the substantial amount of literature providing an analysis *for* EU energy policy. The latter takes a predominantly economic perspective on European energy policy, with a particular focus on the liberalisation of the European electricity and gas markets. From this perspective, studies analysed the challenges for EU electricity and gas market liberalisation²⁴, the consequences of European energy legislation on Member States²⁵, and how to further develop the

²⁴ For an economic perspective on the liberalisation of the EU electricity market see for example Newbery (2002); the liberalisation of EU gas markets and potential scenarios for the future development is discussed in more detail in Ellis, Bowitz et al. (2000).

²⁵ See for example Glachant (2001). Glachant distinguishes between three dimensions against which the impact on national electricity markets is analysed: the legal and regulatory framework, technical infrastructures, and industrial ownership structures. Although this strand of literature is not reviewed here in detail, this does not imply that various changes introduced by European legislation in the energy sector are not relevant for the subsequent analysis. By contrast national interests and position at the EU level may have changed as a consequence of these changes as shown in the discussed literature in this section.

internal energy market agenda (Glachant and Lévêque, 2009).²⁶ Studies on other related policy fields, such as EU environmental policy (Lenschow, 2005), EU climate policy (Skjærseth and Wettstad, 2008) or EU external policy (Lavenex, 2004) provide additional insights on certain aspects of EU energy policy processes, but their key research interest is related to other policy fields.

The topics addressed in the literature that deals specifically with EU energy policy-making reflect to a certain extent the historical development of EU energy policy (see 2.2). Early studies on the development of a European energy policy were mainly interested in why integration in this policy field did not materialise, despite the fact that two founding treaties were related to energy. Studies tried to explain the lack of any substantial progress in energy policy integration mainly by analysing national interests and positions that, according to their perspective, were strongly influenced by energy specific structural features in Member States. Bailey (1976) argues that in the 1970s the UK, as a new Member State with considerable gas and oil reserves, did not have an interest in a European energy policy and prevented major progress in this field. Similarly, France's non-membership of the IEA was identified as an impediment for the development of a common European energy policy after the first oil price shock (Ehrhardt, 1975). Besides these factors different national positions on economic policy and regulatory approaches to economic sectors among the then nine Member States were also a barrier for a common European energy policy (Ray and Dean, 1975).

In her key contribution to EU energy policy studies Matlár (1997) aims to explain the emergence of a European energy policy and the persistence of this topic at the EU agenda since the late 1980s. Matlár (1997) puts Member States at the centre of her analysis despite the fact that a central question was how policy progress was possible despite some Member States' resistance to this development. Applying Putnam's two-level game framework, Matlár assumes that governments are the only significant actors in the policy process and that all policy outcomes can be traced back to governmental positions. While she acknowledges that intergovernmental approaches – as chosen in her analysis – had been criticised, she justifies her choice by the lack of other suitable analytical frameworks. Her analysis confirms that intergovernmentalist

²⁶ For a comprehensive legal overview on EU energy policy with an emphasis on competition in energy markets see Cameron (2007a).

approaches are insufficient to explain developments in EU energy policy over time. She concludes that main factors in the development of European energy policy were less positions of national governments, but rather the emergence of transnational issues (environmental issues), external events (supply disruptions) and institutional changes as a result of the SEA, namely the introduction of majority voting. Linked to that was the emergence of a broader set of actors that gained interest in European energy policy and consequently tried to influence the policy process at the EU level according to their interests and put the role and influence of national governments into context.

Intergovernmentalist approaches have been questioned from very early on: “It would be erroneous to conclude [...] that diverging national interests [...] have been the primary reasons for the absence of a common energy policy” (Alting von Geusau, 1975: 186). Alting von Geusau argues that the Commission’s approach to energy policy was at least of similar importance. This resonates with neo-institutionalist accounts of European integration where formal and informal institutions are considered not only as instruments but also as explanatory factors for European integration (see 3.2.2). With the increasing success of the Commission in developing a European energy policy under the internal market agenda on the basis of competences in other policy fields, the predominant question in the literature was how this progress was possible given the resistance by some Member States.

Padgett (1992) argues that the slow progress to establish an internal energy market in the late 1980s was as much linked to the dynamics of EC policy-making as to technical and legal obstacles in the energy sectors²⁷. According to Padgett, early attempts by the Commission to establish an internal energy market reflected the “fragmented organizational structure and the incrementalist, consensus orientation of the Commission” (Padgett, 1992: 59). In particular, the Commission’s role as the responsible actor for formulating policy proposals and the need for consensus building prevented any major step changes in this sector. In line with these results Eising (2002) argues that intergovernmentalism alone cannot explain the adoption of the first electricity liberalisation directive. Instead he suggests a framework that integrates

²⁷ It can be argued that these obstacles might have been used to defend national interests.

bounded rationality²⁸, neo-institutionalism and policy learning. Eising (2002) argues that the EU institutional setting has considerable influence on the policy outcomes at the EU level by influencing not only Member States' bargaining strategies, but also their basic policy preferences.

Andersen (2001) argues that, due to the lack of clear competences in the field of European energy policy, it has in many cases been introduced "from the side" by Directorates General (DG) other than the DG explicitly responsible for energy, e.g. DG Competition for the energy market liberalisation packages.²⁹ Another process whereby energy policy has emerged at the European level was described as "from above" (*ibid.*) through high level initiatives at political summits (e.g. Energy Charter).

Both of these driving forces for European energy policy indicate a lack of clear ownership of the energy policy process at the EU level. Linked to that was the gradual loss of exclusive control by traditionally strong actors in the energy policy arena since the early 1990s (Andersen, 2001). A wider range of interests such as represented by consumer and environment groups gained access to the arena from the early 1990s (McGowan, 1996b). Energy companies were no longer the only targets and beneficiaries of EU energy policy.

To sum up, the literature review on European energy policy shows that there are only a very limited number of scholarly studies analysing the dynamics of the EU energy policy-making processes at the EU level. It also suggests that an analytical framework that puts Member States and the role of national governments in the centre of the analysis, cannot sufficiently explain the policy dynamics in this policy field. Studies that integrate institutional and procedural elements and focus more on the processes at the EU level can therefore be expected to provide additional insights in EU energy policy-making processes. In addition, studies on the development of EU policy-making

²⁸ The term "bounded rationality" was developed in the economics literature studying human behaviour. It captures the "boundedness of human rationality" in processing information (Simon, 1982). This limitation of human beings, e.g. in terms of the amount of information that can be processed at one moment in time, has important ramifications for decision-making, problem-solving and learning and thus for public policy in a broader sense.

²⁹ Policy initiation in terms of bringing a topic on the informal agenda, e.g. Commission internal discussions, it is still the formally responsible DG that needs to bring forward a formal proposal, i.e. in the early stages of the liberalisation DG XVII (now TREN). However, some key people in the liberalisation process at the time had joined DG XVII from DG IV (now COMP).

over the last decades strongly reflect key concepts of the agenda-setting literature: interdependence of institutional structures, the role of issue definitions and actors' access to the policy arena.

3.4.3 Research questions

The suggested framework for the subsequent empirical analysis distinguishes between two routes of agenda-building, one that starts at the level of 'low politics' and the other one where issue initiation takes place at the level of 'high politics'. This distinction will show whether issue initiation at the level of low politics offers opportunities for policy entrepreneurs to steer proposals into certain venues favourable to their policy objectives, and whether issue initiation at the level of high politics helps to overcome administrative inertia or whether political momentum is lost as soon as political salience disappears. To test these propositions and the underlying dynamics, the analytical framework puts particular emphasis on four conceptual elements: contextual factors, policy entrepreneurs, issue definition, and institutional venues. This leads to the following key research questions that are addressed in this thesis:

- How did agenda-setting routes (low politics vs. high politics) affect policy change and stability in EU energy policy-making?
- How did contextual factors, policy entrepreneurs, issue definitions, and institutional venues influence agenda-setting dynamics in EU energy policy-making?

3.5 Chapter conclusions

The dynamics of EU energy policy-making and the reasons for policy change and stability are rather poorly understood. Previous studies on EU energy policy reveal shortcomings of intergovernmental approaches that put too much emphasis on domestic issues. Furthermore EU studies in general suggest that comparative analytical frameworks can be useful to study EU sectoral policy-making. Thus this chapter has argued that an agenda-setting framework can be a useful analytical tool in shedding light on EU energy policy-making. It draws upon central concepts from agenda-setting frameworks developed in the US and recent systematic approaches to EU agenda-setting research. The interest here, however, is not only why an issue becomes an issue on the political agenda, but also why an issue that made it to the political agenda was

(not) formally adopted as a policy. The analytical perspective therefore spans from policy initiation over to the subsequent decision-making process. This analytical framework is operationalised in the next chapter outlining the research design and methods used.

4 Research Design and Methodology

This chapter elaborates the research design and methodology, i.e. “the logical structures and procedures of scientific enquiry” (Andersen, 2003: 2), used in this thesis.

4.1 Introduction

Studies on agenda-setting used both quantitative and qualitative approaches and proved that both can generate valid and generalisable results on the dynamics of agenda-setting and policy processes.³⁰ Quantitative research designs appear to be particularly useful for comparative research designs across different political systems (Baumgartner, Green-Pedersen et al., 2006) since unified coding of various data sources helps to ensure common standards³¹. However, legal acts or parliamentary processes may have a different institutional significance depending on the political system and culture that hints at the limitations of quantitative research designs. Qualitative in-depth case study research on agenda-setting is therefore important to provide detailed accounts of policy change and stability as they “can offer insights into and information about the causal process at work” (John, 2006: 983). A number of studies on agenda-setting show that qualitative case study designs are an appropriate research approach (e.g. Tallberg, 2003; Pralle, 2006; Princen and Rhinard, 2006; Timmermans and Scholten, 2006).

Given the relatively limited number of previous studies on EU agenda-setting in general, and in the field of EU energy policy in particular, there is scope for further study to gain a better understanding of causal mechanisms taking into account contextual factors. Thus, for the analysis of agenda-setting in EU energy policy a qualitative research design seems to be particularly suitable. It allows tracking and analysing a broader picture including contextual factors within which policy processes take place. Although quantitative research methods have been portrayed as being ‘more scientific’ than qualitative approaches due to the ‘hard numbers’ used, many convincing arguments have been put forward in support of qualitative research designs (e.g. King, Keohane et al., 1994; Yin, 2003; Flyvbjerg, 2006). This will be elaborated further in the following sections of this chapter which outlines the qualitative case study research

³⁰ For an overview see, for example, the special issue “Comparative studies of policy agendas” of the *Journal of European Public Policy* (2006), Volume 13, Issue 7.

³¹ See for example the “Policy Agendas Project” that collects data from various archived sources to trace changes in national policy agendas and public policy outcomes on the basis of a unified policy content coding system. For more information see the project’s website: www.policyagendas.org.

design used in the subsequent empirical analysis, and explains the operationalisation of key concepts, data collection strategies, and methods used for data analysis.

4.2 Case study research

The advantages and opportunities of qualitative case study research – here defined as “the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events” (George and Bennett, 2005: 5)³² – have been well summarised in Yin (2003: 2): “[...] the distinctive need for case studies arises out of the desire to understand complex social phenomena. In brief, the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events [...]”. Along with the general advantages of qualitative research methods, the case study approach allows the studying of the complexity of a given subject in detail, including contextual factors, because it does not restrict the analysis to a limited number of quantifiable variables. Due to the complexity of policy processes (e.g. Sabatier, 1999) the case study approach is considered as most appropriate for the analysis of EU agenda-setting processes. As the aim of the analysis is to explain policy change that requires “attention on significant broad-scale relationships within policy systems” (Stewart, 2006: 184), a qualitative case study approach is chosen. A particular strength of case study research is the ability to explore causal mechanisms by looking at a large number of intervening variables and identify unexpected aspects in the policy studies process (George and Bennett, 2005).

There are several “misunderstandings” (Flyvbjerg, 2006)³³ of qualitative case study research which include the bias of materials interpreted by a researcher with its own set of values and beliefs, and the ‘weak’ basis for scientific generalisation. Case study research is, however, not more exposed to bias than other research methods since arbitrary subjectivism can equally influence the choice of categories and variables for

³² Apart from the case study approach George and Barnett (2005: 5ff) distinguish between two other research methods: 1) statistical method “estimating the generalized causal weight or causal effects of variables”; 2) formal models using “rigorous deductive logic [...] to develop both intuitive and counterintuitive hypotheses about the dynamics of causal mechanisms”. By contrast, Gerring (2007) argues that case study research is not necessarily based on a qualitative research design, and that case study research should not be defined on the basis of a certain method of data collection but on the basis of the explicit research goals (see Chapter 2 in Gerring, 2007).

³³ Flyvbjerg (2006) convincingly refutes five misunderstandings of qualitative research: 1) general, theoretical (context-independent) knowledge is more valuable than concrete, practical (context-dependent) knowledge; 2) case studies cannot contribute to scientific development; 3) case study as a method for generating hypotheses instead of testing hypotheses and theory buildings; 4) case study research’s bias toward verification; 5) difficulty in developing general propositions and theories.

quantitative or structural investigation (Flyvbjerg, 2006: 235). Inference is inherently an imperfect process independent of it being a quantitative or qualitative research design, and researchers need to address this by pointing at the uncertainties and limits of their conclusions (King, Keohane et al., 1994: 8).

With regard to generalisation, it is important to distinguish between analytical generalisation and statistical generalisation. Since the latter is not possible on the basis of qualitative research results, qualitative research needs to aim for analytical generalisation. The objective is then to expand and generalise theories – often existing ones upon which specific propositions have been elaborated and which are verified or falsified in the case study – and not to derive statistical frequencies (Yin, 2003: 10). The key point is that while it is therefore not possible to draw statistical generalisation from qualitative case study research, it is possible to generalise analytically, i.e. expand and generalise theories.

As far as the analysis of EU policy processes is concerned, the ability to generalise is limited because research projects often deal with single policy areas based on single case studies. This focus on single case study research “has a strong rationale, given the vicissitudes of European integration, the uniqueness of decisions of ‘high politics’, and the sector-specificity of European policy-making, all of which make it difficult to draw on more than a single case study” (Schmidt, 1996: 234). While the particularities of EU policy-making as outlined by Schmidt need to be taken into account for the analysis of EU policy-making, the challenge to generalise across different policy areas applies similarly to national policy-making. Although this thesis deals only with one policy field (energy policy), which limits its scope for generalisation across different areas of EU policy-making, the research design and the selection of two case studies of EU energy policy-making tries to address this methodological limitation (see 4.3).

Stake (2005) suggests the differentiation between intrinsic case study and instrumental case study research. The intrinsic case study is interested in a better understanding of a particular case, the instrumental case study aims to “provide insight into an issue or to redraw a generalization” (*ibid.*: 445). In the latter the case serves as an instrument to get a better understanding of a bigger picture. This does not mean that the case is analysed in less detail, but contexts and activities are analysed in the same depth. It is not always

possible to draw a clear-cut distinction between intrinsic and instrumental case study research. This thesis is located in between because its research objectives are to contribute to a better understanding of the analysed case studies, while at the same time aiming for generalisable insights in relation to EU energy policy-making.

Using the theoretical framework identified in the previous chapter the case studies therefore contribute to theory building (George and Bennett, 2005)³⁴ by assessing the validity and scope of suggestions from the EU agenda-setting literature on the basis of two empirical case studies. Its objective is theory building rather than theory testing since the key framework on EU agenda-setting as suggested by Rhinard and Princen (2006) – the distinction between low politics and high politics agenda routes in EU agenda-setting – cannot be considered as fully fledged theory. According to the definition by Schlager (1999: 234) a framework provides “a foundation for inquiry by specifying classes of variables and general relationship among them, that is, how the general classes of variables loosely fit together into a coherent structure”, but it does not provide “explanations for, or predictions of, behaviour and outcomes”.

The case study analysis in this thesis aims to contribute to the development of the suggestions made by Princen and Rhinard, building on robust theoretical frameworks on agenda-setting developed in the context of national political systems. The key research objective of this thesis is to explain EU policy change and stability by analysing EU agenda-setting dynamics. Thus the dependent variable to be explained is policy outputs. Based on the theoretical framework key independent variables are policy entrepreneurs, institutional venues, issue definitions and contextual factors.

4.3 Case study selection

The selection of the case study is a crucial step in case study research, and a fundamental requirement is that the selected cases are relevant to the research objective (George and Bennett, 2005: 83f). Cases can be selected in order to test a certain theory, or a theory can be chosen subsequently to explain certain cases (*ibid.*). In this thesis both approaches were followed.

³⁴ George and Bennett (2005: 74-76) differentiate between six different types of theory-building case study research: atheoretical/configurative idiographic, disciplined configurative, heuristic, theory testing, and plausibility probes, “Building Block” studies.

At the initial stage case study selection was empirically driven in that the thesis was part of a larger research programme on energy policy analysis. The first research objective of this thesis was to provide a better understanding of energy policy-making processes at the EU level. This predetermined EU level processes as the main level of analysis although relevant linkages to the national or regional level in the context of multi-level governance need to be taken into account. On the basis of the literature review on EU policy-making and EU energy policy, the theoretical framework elaborated in the previous chapter was developed.

Secondly, case studies of EU energy policy-making had to be selected in order to apply and test the theoretical framework. The key task was to identify cases of EU energy policy-making that were suitable to test the agenda-setting framework developed in the previous chapter. A basic criterion for them to be valid cases for EU energy policy-making was that the policy initiative had to be under the responsibility of the Commission's DG TREN. Climate change policy initiatives were therefore ruled out as they were under the responsibility of DG ENV. Since a key research interest is to assess how the issue career, and in particular policy initiation, influences the subsequent decision-making process, only policy initiatives that were formally proposed could have been considered as case studies.³⁵ Suitable EU energy policy proposals had therefore to be identified as a unit of analysis. This was then further narrowed down to the supply side of the energy system, i.e. energy generation, which ruled out demand-side policy measures such as most energy efficiency policies.

On this basis two proposals were chosen as case studies: the nuclear package proposed in 2002/2003 and the binding 20% EU RES target by 2020 put forward by the Commission in a RES Road Map at the beginning of 2007 followed by a directive proposal in January 2008. The two case studies constitute rather polar cases with respect to the key theoretical interest of this study, which is the impact of low politics and high politics agenda-setting routes on EU energy policy-making. Polar or extreme cases with respect to a study's research objective are considered as a useful basis to contribute to theory building (Eisenhardt, 1989; Pettigrew, 1990).

³⁵ Policy initiatives not published as formal policy proposals could have been chosen as examples for failure to achieve access to the formal decision agenda.

The nuclear package followed predominantly a low politics agenda-setting route, whereas the RES target remained largely at the level of high politics. Whilst nuclear energy had achieved a relatively high share in the EU electricity supply mix by the early 1980s, the contribution of renewable energy sources (in particular if large hydro installations are excluded) was virtually zero (see 2.1). Nuclear energy benefited from its special status under the Euratom Treaty with strong implications for the institutional setting in this policy field. The EP has only a consultative role and the Commission enjoys a clear jurisdictional basis and is therefore in a legally ‘strong’ position. By contrast, RES policy initiatives need to be based on internal market or environmental competences with full involvement of the EP under co-decision procedure.

In order to be able to analyse policy change, the period analysed should span over at least 10 years (Sabatier, 1998) due to the stability and long-term dynamics in policy subsystems. Both case studies include a brief review of relevant developments in both fields that precede the actual policy proposal which go back to the early 1970s. The key period of the analysis spans the years from the late 1990s until the end of 2008. Setting an end date to the analysis of an ongoing policy process proved particularly challenging. In both case studies important milestones were achieved in November and December 2008. In November 2008 the Commission published a new policy proposal in a follow-up to the nuclear package and in December 2008 political agreement was reached on the RES directive.

4.4 Validity of the research design

In general, validity is built into qualitative research designs by the triangulation of results from different methods for data collection and analysis. Triangulation can be defined as “using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation” (Stake, 2005: 454). In practice, multiple perceptions are captured by using different data sources such as primary and secondary documents, interviews and observations. Yin (2003: 98f) refers to a distinction between four types of triangulation: data triangulation, investigator triangulation, theory triangulation and methodological triangulation. While investigator triangulation is not possible in a doctoral research project, the other three types of triangulation were used in this thesis. Theory triangulation has been applied in the construction of the theoretical framework

in the previous chapter. Data and methodological triangulation will be elaborated further in the sub-section below on data analysis.

The validity of the case study research design can further be ensured using three tests (Yin, 2003: 34-39): construct validity, internal validity, and external validity. Construct validity is achieved by two steps (Yin, 2003: 35): first, selection of specific types of changes that are to be studied and how they are related to the original objectives of the study; and second, demonstration that the selected measures of these changes are suitable to indicate the specific types of change that have been selected (see 4.5). Internal validity is achieved through various tactics when analysing the data as will be elaborated in more detail below (see 4.7). External validity is achieved through the use of established theories as demonstrated in the previous chapter.

While generalisation – or external validity – is a key concern for scientific research in order to achieve context independent knowledge for an explanation of a given phenomenon, it is ‘only’ one consideration among others when designing case study research. Internal validity might be more relevant than external validity in a single case study that is interested in understanding causal mechanisms of a social phenomenon such as an agenda-setting process.³⁶ Despite the importance of achieving generalisable results from scientific research, case studies can also generate “concrete, practical (context dependent) knowledge” (Flyvbjerg, 2006: 221-224) and thus provide a better understanding of the particular case analysed. The generation of both context independent (generalisable) and context dependent knowledge can be an important contribution of qualitative case study research.

4.5 Operationalisation of key concepts

Since “the EU is a complex and heterogeneous configuration, both in structural terms and in terms of the kind of processes [...] the question is not primarily how to measure, but what to measure” (Andersen, 2003: 6). In order to respond to this methodological challenge of EU policy studies, the theoretical framework is operationalised in three steps: the application of the stages of an issue career is explained, key variables are broken down in sub-research questions, and policy change is defined.

³⁶ Trade-offs and considerations of case study research designs comparing case study and cross-case study research designs are discussed in Gerring (2007: 37-63).

While policy processes do not take place in stages (see 3.2.3), the stages of an issue career – issue initiation, issue specification, issue expansion and issue entrance – are used as an heuristic framework to guide the empirical analysis in order to structure policy processes analytically from an agenda-setting perspective following Princen and Rhinard (2006). Differences between the various stages are fluid. *Issue initiation* captures the phase when an issue arises either due to shared political attention at high politics or out of professional concerns at the level of low politics. The former can be reflected in Council conclusions, the latter in calls for policy action from expert communities or from Commission officials. *Issue specification* refers to the stage when general issues are specified in policy proposals. This phase is considered here as the Commission drafting process of new policy proposals taking into account that in both policy processes policy proposals were formally published by the Commission. *Issue expansion* relates to the stage when an issue moves “beyond the initial actors in specific venues to a wider set of participants” (Princen and Rhinard, 2006: 1122); this can be top down (from the European Council to the Council and Commission) or bottom-up (from low politics to higher political levels). It is considered here as the phase when the Commission proposals are published and the issue is formally expanded to other venues including the Council and the EP. *Issue entrance*, the final stage of the issue career, “occurs when an issue gains access to the formal agenda of EU decision-makers” (Princen and Rhinard, 2006: 1122).

The operationalisation of the last stage (issue entrance) requires a clear definition of what is meant by the EU’s “formal agenda”. Princen and Rhinard do not provide an explicit definition of the term. It is difficult to apply the generic definition from the agenda-setting literature to EU policy-making that defines the “formal agenda” as an agenda where issues receive serious attention from decision makers (see 3.2.3). Serious attention could refer in EU policy-making to various indicators such as: an issue’s inclusion in the conclusions of the European Council, an issue being subject to a Commission’s drafting process, an issue being on the agenda of COREPER or Council of Ministers meetings. Issue entrance can therefore be applied to various stages of EU policy-making and it is here understood as a generic category that captures the entire agenda-setting route. This use of issue entrance is also reflected in Princen and

Rhinard's empirical case studies on EU bioterrorism and non-smoking policies (Princen and Rhinard, 2006).

The analysis in this thesis is not strictly limited to agenda-setting (why an issue becomes an issue?), but how the way an issue was put on the formal agenda affected the subsequent policy process and thus how the agenda-setting route can explain policy change and stability in EU energy policy. Agenda-setting and decision-making cannot be clearly distinguished. The decision-making process itself is a continuous struggle over the agenda as illustrated by Tallberg's (2003) analysis of the agenda-shaping powers of the Council Presidency.

While the distinction between the low politics and high politics route can provide interesting insights in EU agenda dynamics, building on the agenda-setting literature four more specific explanatory variables were identified in order to explain EU energy policy-making as argued in the previous chapter: contextual factors, policy entrepreneurs, issue definitions, and institutional venues. In order to answer the two key research questions (see 3.4.3), based on the previous literature review the different elements of the theoretical framework were operationalised for the empirical analysis by formulating specific sub-research questions as summarised in Table 2.

Table 2: Operationalisation of the theoretical framework

<i>EU agenda-setting routes High politics vs. low politics (Princen/Rhinard 2006)</i>
<ul style="list-style-type: none"> • <i>Issue initiation:</i> Why and how was the issue initiated (by political leaders or out of professional concerns in expert communities)?
<ul style="list-style-type: none"> • <i>Issue specification:</i> How was the issue specified (by political consensus or technical discussions in expert groups and working parties)?
<ul style="list-style-type: none"> • <i>Issue expansion:</i> How was the issue expanded to lower/higher levels of decision-making in the EU?
<ul style="list-style-type: none"> • <i>Issue entrance:</i> How did the issue enter the decision-agenda (political momentum or gradually built-up impetus)?
<i>Contextual factors</i>
<ul style="list-style-type: none"> • Did contextual factors (e.g. economic downturn, focusing event, public opinion, administrative changes) affect EU energy policy-making and/or open a policy window (Mazey 1998; Radaelli 1995; Wendon 1998)?
<i>Policy entrepreneurs</i>
<ul style="list-style-type: none"> • Who were the dominant policy entrepreneurs and what was their “pet proposal” (Kingdon 1994[1984])?
<ul style="list-style-type: none"> • What were the policy entrepreneurs’ anticipated future gains: bureaucratic (expansion of jurisdiction), purposive (values and beliefs), solidary (being close to power) (Kingdon 1994[1984])?
<ul style="list-style-type: none"> • Did policy entrepreneurs identify a policy problem, build coalitions and therefore define problems in a receptive way to relevant target audiences by pre-testing problem definitions and adapting them accordingly (Mintrom and Vergari 1996)?
<ul style="list-style-type: none"> • Did the Commission assess its proposals against dominant positions and build winning coalitions by consensus-building and selling proposals (Nugent 2006; Pallis 2006; Wendon 1998)?
<ul style="list-style-type: none"> • Did the Commission (try to) eliminate controversial issues from the agenda to help political agreement (Hennessy 2007)?
<ul style="list-style-type: none"> • Did the Commission use advisory committees and working groups to access independent information and to build legitimacy (Marks and Hooghe 1996)?
<ul style="list-style-type: none"> • To what extent did legitimacy on the basis of public concerns and support by the EP help the Commission to expand in new policy fields despite resistance from important actors (Pallis 2006)?
<ul style="list-style-type: none"> • To what extent did the ECJ help the Commission to expand its jurisdiction (Tömmel 2008b)?
<ul style="list-style-type: none"> • Did the Commission use the European Council to legitimise its proposals (Nugent 2006)? How did the European Council sanction or legitimise Commission policy initiatives (Rasmussen 2007)? To what extent did Council initiatives diminish the Commission’s influence on the agenda (Rasmussen 2007)?
<ul style="list-style-type: none"> • How did Council Presidencies use their agenda-shaping powers (agenda-setting, agenda-structuring and agenda-exclusion) to influence the decision-making process (Tallberg 2003)?
<ul style="list-style-type: none"> • Did the EP influence the decision-making process by initiative reports, delays, informal contacts or other means (Jones and Clark 1999; Rasmussen 2007)?
<ul style="list-style-type: none"> • Did interest groups influence the decision-making process by providing legitimacy to proposals by providing key information, adequate resources or economic and political weight (Nugent 2006; Greenwood 2007)?
<i>Issue definition</i>
<ul style="list-style-type: none"> • To what extent did issue definition predetermine the solution to the problem and influence actors’ access to institutional venues (Baumgartner and Jones 1993)?
<ul style="list-style-type: none"> • Did new entrants to the policy field contribute to the redefinition of issues, changes in policy image and institutional venue and thus create positive feedback processes for policy change (Baumgartner and Jones 1993)?
<ul style="list-style-type: none"> • To what extent were policy frames (problem definition and solutions) institutionalised (Lenschow and Zito 1998)?
<i>Institutional venues</i>
<ul style="list-style-type: none"> • To what extent were issues expanded into new venues that were more receptive to certain

policy entrepreneurs' objectives (Baumgartner and Jones 1993)?
<ul style="list-style-type: none"> • To what extent did issue expansion into specific institutional venues lead to non-decision (Baumgartner and Jones 1993)?
<ul style="list-style-type: none"> • To what extent was the choice in institutional venues influenced by organisational needs, beliefs, the ability to process information, or policy learning (Pralle 2003)?
<ul style="list-style-type: none"> • Did the Commission use process legislation to establish venues capable of making legislation (Cram 1993)?
<ul style="list-style-type: none"> • Did EU institutions use institutional venues to select interest groups that are most in line with their agenda (Mahoney 2004)?
<ul style="list-style-type: none"> • To what extent did the Council's vertical differentiation of venues help to overcome "issue specific rigidities" by shifting negotiation to higher political levels (Eising 2002)?
<ul style="list-style-type: none"> • Did institutional venues restrict actor access if there was high political salience and deliver high quality information to improve the basis for policy-making if there was low political salience on a highly technical issue (Broscheid and Coen 2003)?
<ul style="list-style-type: none"> • Were the conclusions reached within institutional venues made by experts not seriously questioned by political actors and did they therefore affect the agenda-setting process (Gehring et al. 2008)?

Finally, policy change needs to be specified. Although policy change has been the subject of countless public policy studies, the literature does not provide a single clear-cut definition of policy change. Instead "empirical studies tend to assume, rather than to define 'policy change'" (Stewart, 2006: 184). Since policy can be considered as changing constantly, it does not make sense analytically to distinguish between change and stability, but rather to distinguish among different types of policy change (Hogwood and Peters, 1983). Despite the difficulty in establishing a clear classification of policy changes because of their complexity and variety in practice, ideal types of policy change can be distinguished (Hogwood and Peters, 1983: 26-29): policy innovation (entry of government in a new field), policy succession (replacement of existing policies in the same area of activity), policy maintenance (continuous replacement), and policy termination (end of policy including public expenditure).

While policy innovation rarely occurs in industrialised society because governmental policies stretch over all policy relevant fields (Hogwood and Peters, 1983), at the EU level the Commission has often sought to expand its competences into new fields. The two case studies analysed therefore cover policy innovation³⁷ (the nuclear package) and policy succession and maintenance (the RES directive). The analysis seeks to explain the underlying decision-making process of these intended policy changes measured

³⁷ The term "policy innovation" is used here as defined above by Hogwood and Peters. It does not, therefore, imply a radical policy change but the expansion of jurisdictional powers into a new policy area. As will be seen in Chapter 5 the nuclear package was an attempt by the Commission to expand its competences to a new policy field.

against achieved policy outputs, i.e. objectives and instruments incorporated in a legislative or regulatory act, by analysing agenda dynamics.

4.6 Data collection

Data collection was based on primary and secondary documents as well as interviews. This triangulation of data collection methods should mitigate any bias in data collection. Primary and secondary documents were used at the initial stage of the analysis to track the issue career for each case study in as much detail as possible in order to prepare a set of interview questions for semi-structured interviews at the second stage of the case study research. Main sources for primary documents were the online document archives of the Commission, the Council and the EP as well as the Commission's main library in Brussels, DG TREN's library in Brussels and the Commission's CIRCA³⁸ database.

In order to complement these 'raw' data with information on contextual developments and reactions by other policy entrepreneurs, professional news archives and journals were searched. These included the online database Factiva, Platts' Nucleonics Week, Platts' Power in Europe, Agence Europe, ENDS Europe daily as well as European Voice. Positions of key players were investigated further on the basis of position papers and other statements available online.³⁹ In addition the limited range of available secondary literature was analysed. The analysis of these various documentary sources provided a detailed overview of each policy process and each step of the issue career including relevant policy entrepreneurs, institutional venues, issue definitions and contextual factors.

On this basis interview questions were developed for semi-structured interviews. While the aim was to guide the interview along key issues in relation to the research questions (see below), they provided enough freedom for respondents to elaborate on issues that seemed most important from their perspective to ensure that all relevant factors were identified (Hakim, 2000: 34). The guideline was adapted according to the interviewee's

³⁸ Communication and Information Research Centre Administrator (CIRCA) was used to access documents related to the European High Level Group on Nuclear Safety and Waste Management, for further information see: http://circa.europa.eu/Public/irc/tren/nuclear_safety_and_waste/home.

³⁹ Thus, as opposed to some previous studies on agenda-setting (e.g. Baumgartner and Jones, 1993) this thesis does not analyse media coverage of the two case studies as an independent variable to explain the developments of the governmental decision agenda. Kingdon (1995 [1984]) concluded, for example, that media coverage did often not reflect what interviewees described as high on the governmental agenda. In addition the absence of "European" – as opposed to nationally biased – media coverage of EU policy-making strongly limited the scope to follow such a methodological approach here.

position in the process and the information gathered in previous interviews and documents. The aim was to verify and falsify the previously gathered information and thus to validate factors that have influenced agenda dynamics and ultimately policy change.

In total 47 semi-structured interviews were conducted with Commission officials, Council officials, officials from Member States and national nuclear safety authorities, MEPs, MEP assistants, and interest group representatives. The interviewees were chosen combining a positional and reputational approach. The former identifies key actors on the basis of their position in the policy process; the latter relies on other interviewees' assessment on who played a relevant role in the policy process – also referred to as a 'snowball' strategy of interviewing (Arksey and Knight, 1999).

During the selection of interviewees attention was paid to avoiding a selection bias for each case study. Within the Commission, officials from different DGs and different rank (members of cabinet, heads of unit and administrators), with presumably different views on the policy process were interviewed. MEPs or MEP assistants from different political groups were interviewed. In all cases attempts were made to avoid a cultural bias by interviewing people with different national backgrounds. Since it was not possible to conduct interviews with officials from all 27 Member States, the objective was to get the view of key participants in each case study. Interviewees were granted anonymity and therefore only their institutional affiliation is indicated (for full list of interviews conducted for this thesis see Appendix C). Most interviewees agreed that the interview was recorded; otherwise hand-written notes were taken. Both were subsequently documented.

A first round of 25 interviews was conducted between June and October 2008 on the nuclear package, a second round of 22 interviews followed between March and June 2009 on the RES directive. Most interviews were carried out in person; a few interviews were carried out on the phone. Interviews were conducted in English, German or French and generally took between 30 and 90 minutes.

4.7 Data analysis

The analysis of qualitative data can be divided into three components: data reduction, data display, and conclusion drawing and verification (Miles and Huberman, 1994). Data reduction comprises the simplifying and transforming of the original data towards the actual research questions. Data display includes the organised and compressed display of the previously condensed dataset to allow for conclusions drawing and verification. In order to facilitate the latter, data display needs to identify themes and trends in the overall data in view of the originally proposed framework for analysis and the derived propositions. Based on contrasting case studies it was proposed to identify similarities and thus to draw some more generalisable conclusions on EU energy policy-making.

This approach to data analysis was used in the empirical analysis. It was guided by the sub-research questions summarised in Table 2. Besides the reliance on theoretical propositions as a general strategy for data analysis, alternative interpretations were considered throughout the empirical analysis to prevent bias in the data analysis. Due to the inherent difficulty in verifying interpretations by interviewees, particular attention was paid to the triangulation of data sources and/or methods of data collection. Thus data were only used if they were confirmed either by several interviewees and/or backed up by written data sources. Furthermore it was recognised that interviewees with a similar position in the policy process tend to have the same views on the process. It was therefore particularly important not to be biased by similar accounts by different interviewees if it was not to describe a particular position or perspective on the process.

5 Case study I: The nuclear package

5.1 Introduction

During the 1990s nuclear energy did not play a major role in the EU energy policy debate that was dominated by the internal energy market liberalisation packages and increasingly energy efficiency and renewable energy (see also 2.2). However, nuclear energy-related issues gradually re-emerged onto the EU energy policy agenda due to various contextual factors. Against this background some in the Commission tried to use a window of opportunity to keep the nuclear option open and to expand its competences in the field of nuclear energy policy by publishing a ‘nuclear package’ in November 2002. The nuclear package included two directive proposals under the Euratom Treaty covering nuclear safety, decommissioning funds, and radioactive waste management. The nuclear package was, however, opposed by a blocking minority in the Council. The political discussion resulted in lengthy consultation processes in different institutional venues. The nuclear package was never adopted in the Council. Instead the Commission tabled a new proposal on nuclear safety in November 2008. This new proposal sets the end date of the empirical analysis in this chapter (for a timeline of this policy process see Appendix A).

This chapter analyses how the way in which the nuclear package was initiated by the Commission influenced the subsequent policy process. It examines how other policy entrepreneurs influenced the agenda-setting (and thus the policy) process by analysing the role of issue definitions and institutional venues. Against the theoretical framework elaborated in Section 3.3, it is argued that unclear problem definition by the Commission and its exclusion of expert communities within existing institutional venues weakened the agenda-setting process in terms of content and process. This helped opposing Member States to block the nuclear package in the Council.

It is shown that despite – or rather because of – its formally strong position as an agenda-setter under Euratom, the Commission was not an effective policy entrepreneur. It failed, for example, to sell ideas to Member States and their nuclear regulators during the drafting process and was therefore unable to build winning coalitions on the basis of appropriate issue definitions and/or institutional venues. By contrast, opposing Member States – in particular with the help of national nuclear regulators – acted as policy entrepreneurs by proposing convincing alternative policies and processes. The case

study underlines the view that agenda-setting, and in particular the influence on the subsequent policy process, depends less on the formal position of a policy entrepreneur in the policy process than on its ability and willingness to combine a window of opportunity with favourable problem definitions and institutional venues sympathetic to its policy goals.

The chapter is structured as follows. The next section outlines the ‘special’ institutional basis for EU nuclear energy policy under the Euratom Treaty and takes account of institutional elements relevant to nuclear safety and radioactive waste management at the Community and international level. This overview shows why the nuclear package constituted a radical policy change in this policy field. The subsequent analysis of the agenda-setting and decision-making process is structured along the stages of an issue career: policy initiation, issue specification, and issue expansion.

Policy initiation started in the late 1990s due to various contextual factors. In late 2001, after the publication of the Advocate General’s Opinion, issue specification started with the Commission’s internal drafting process. The issue expansion phase was entered when the nuclear package was published in late 2002. This phase spanned over several years starting with several consultation processes launched by the Council in mid-2004 and ending with a new Commission proposal on nuclear safety published in November 2008. Each step of the issue career is analysed using the key concepts elaborated in Section 3.3: contextual factors, policy entrepreneurs, issue definition, and institutional venues.

5.2 Nuclear energy and Community energy policy

5.2.1 The Euratom Treaty

Nuclear energy enjoys a ‘special status’ in the EU institutional framework since it is based on a dedicated jurisdictional basis. The Euratom Treaty, signed in 1957 and coming into force in 1958, established the European Atomic Energy Community (EAEC) with special provision for the nuclear sector. Although the Executives of the ECSC, the EEC and the EAEC were merged in 1967 in a single Council and a single Commission as a result of the Merger Treaty, and the ECSC and the EEC merged with the EU in 1992 as a consequence of the Maastricht Treaty, the EAEC retained its separate legal personality and its provisions remained unaffected by the EC Treaty (Art.

305(2) EC Treaty), but it shared the EU institutions. As a result ‘new’ policy objectives and legal provisions that were incorporated in the Maastricht and Amsterdam Treaties such as environmental objectives or the precautionary principle do not apply to the Euratom Treaty (Hummer, 2008: 512ff). The Lisbon Treaty has not affected the EAEC’s ‘special status’⁴⁰.

The major objective of the Euratom Treaty has been the support of the formation and development of Europe’s nuclear industries to secure the Community’s energy supply. Nuclear energy was considered as a cheap energy source that would help Europe become less dependent on oil imports. Cameron notes that “the authors of the Euratom Treaty took an almost gung-ho approach to their subject” (Cameron, 2007b: 73). Issues related to radioactive waste management are, for example, virtually absent in the Euratom Treaty because it was not considered as an important issue in the 1950s. With the help of a Community framework, it was hoped all Member States could benefit from the development of atomic energy. Art. 1 of the Euratom Treaty states:

“It shall be the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with the other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries.” (Euratom Treaty, Art. 1)

From this it follows that the prime task of the EAEC was the promotion of the civil nuclear industry and thus implicitly the promotion of nuclear energy as energy source within the EAEC.

Specific tasks of the Treaty include the protection of the workforce and the general public from radiation (Chapter 3, Art. 30-39), the secure supply of nuclear fissile materials (Chapter 6, 52-76), and safeguarding the nuclear fissile supply chain to prevent abuse for military purposes (Chapter 7, Art. 77-85). The Commission disposes of supranational competences in these three areas. In addition the Commission tasks include the promotion of R&D in the field of nuclear energy and the dissemination of

⁴⁰ The Lisbon Treaty amends the Euratom Treaty by its Protocol No 2. The Euratom provisions continue to have their full legal effect and Euratom keeps its own legal personality outside the framework of the EU. The amendments are only intended to adapt the Euratom Treaty to the new rules laid down in the Lisbon Treaty, in particular in the institutional and financial fields.

research results (Art. 4-11). Furthermore, the Commission shall facilitate investment in nuclear energy and ensure the availability of basic installations necessary for nuclear energy. According to Art. 37 of the Euratom Treaty Member States need to report ‘general data’ to the Commission on the siting and surroundings of a new nuclear installation. Under Art. 40 of the Euratom Treaty the Commission is obliged to publish periodically illustrative programmes (so called PINC) indicating nuclear energy production targets and all the types of investment required for their attainment, in order to facilitate action and stimulate investments⁴¹. According to Articles 41 and 42 of the Euratom Treaty any new investments related to nuclear activities have to be communicated to the Commission.

Although the Euratom Treaty was considered an important building block in European integration, in particular between France and Germany after the failed European Defense Community in 1955 (Lake and O’Driscoll, 2002), it did not result in a common approach to a European nuclear energy policy. This was prevented by the persistent and divergent national interests in this sector. Due to the close link between the development of civil nuclear technology and the military technology “the same culture of secrecy [...] pervaded the civil nuclear sector” (Lake and O’Driscoll, 2002: ii).

This lack of transparency has also been reflected in the decision-making procedures and particularly the weak role of the EP (or the “Assembly”) under Euratom. The Commission and the Council only have to consult the EP in legislative procedures under Euratom.⁴² Despite attempts to change this institutional setting, Euratom was never a core issue on the EP’s agenda for intergovernmental conferences, and the majority of Member States were always successful in preventing any substantial changes despite support from Member States such as Austria and Ireland to end the special role of EAEC (Lake and O’Driscoll, 2002).

⁴¹ Art. 40 of the Euratom Treaty says: “In order to stimulate action by persons and undertakings and to facilitate coordinated development of their investment in the nuclear field, the Commission shall periodically publish illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment. The Commission shall obtain the opinion of the Economic and Social Committee on such programmes before their publication.”

⁴² Until the SEA came into force in 1987, the consultation procedure was the only procedure for non-administrative legislation. The cooperation procedure introduced by the SEA, and the co-decision procedure introduced by the Maastricht Treaty in 1993, gave more influence to the EP, but these changes did not affect the decision-making procedure under Euratom which remains subject to the consultation procedure. However, the EP is also the co-budgetary authority for all expenditure under Euratom.

The key actors under Euratom are therefore the Commission and the Council. Within the Council the Working Party on Atomic Questions (WPAQ)⁴³ is the central institutional venue that deals with all matters related to Euratom. It is composed of national officials and includes a Commission representative. The EP does not have formal access to the WPAQ. The WPAQ can be considered as “the most important forum for the implementation of the provisions of the Euratom Treaty and the secondary legislation deriving from it” (Lake and O’Driscoll, 2002: 139). Although its role is technically the preparation of documents for the Council of Ministers or COREPER, it “would seem to be the de facto decision-making body with respect to the Euratom Treaty” (Lake and O’Driscoll, 2002: 139). One explanation for this key role is the importance of expertise in the field of nuclear safety and radioactive waste management (*ibid.*).

Within the Commission Euratom related responsibilities were mainly shared among DG TREN and DG ENV until 2000 when nuclear competences were concentrated in DG TREN. Until 2000 DG ENV’s Directorate C, “Nuclear safety and civil protection”, dealt with radiation protection, safety of nuclear installations, radioactive waste management and civil protection, whereas DG TREN led on general issues related to nuclear energy policy (e.g. publication of PINCs), and its Directorate E, “Safety Control Euratom”, was mainly responsible for nuclear safeguards under Euratom.⁴⁴

5.2.2 *Community activities on nuclear safety and radioactive waste management*

The high expectations for the future role of nuclear energy in the European Community were strongly reflected in various energy policy statements by the Commission, e.g.: “As far as nuclear energy is concerned, its security of supply and its price characteristics make every possible acceleration of its development desirable” (CEC, 1972: 8-9). Nuclear energy was valued as an economic option to reduce dependency on oil and thus as a measure to increase energy security in Europe. The Commission’s aspiration for nuclear energy was further underlined in the 1974 energy strategy, where energy policy objectives for the year 1985 were developed. One objective was to supply 50% of electricity needs in the EC by using nuclear energy (CEC, 1974). It even went as far as

⁴³ Often referred to as the ‘Atomic Questions Group’ (AQQ)

⁴⁴ See official interinstitutional directories published by the European Commission.

to forecast that “at least 50% of total energy requirements around the year 2000 could be covered from this source [nuclear energy]” (CEC, 1974: 9). It was argued that nuclear energy’s economic performance had “now become economically competitive with all other sources of primary energy” and therefore “production of electricity in nuclear power stations must be increased as quickly as possible for security reasons” (CEC, 1974: 20).

However, in its second assessment report of the 1985 objectives – three years later – the Commission conceded that the nuclear target would not be achieved and that this was due to increasing “public doubts” (CEC, 1977: 7), but argued that the expansion of the nuclear programme was still considered as “vital”. Tensions between the official Commission opinion that nuclear was needed within the Community’s energy supply mix, and increasing problems of public acceptance of nuclear power, became a predominant characteristic of Community debates from then on: “Given the contribution of nuclear energy to all the Communities’ energy objectives, this option has to be kept open, but its future depends to a large extent on its acceptability by society and political leaders” (CEC, 1995a: 24). Public concerns on the safety of nuclear energy were therefore one reason why Community activities in the field of nuclear safety and radioactive waste management were reinforced.

The Council had supported the Commission’s work towards a European approach to nuclear safety and radioactive protection since 1975 (Council, 1975). A Council Resolution requested Member States to “collaborate effectively at Community level” with the aim of a “progressive harmonisation of safety requirements and criteria in order to provide an equivalent and satisfactory degree of protection of the population and of the environment against the risk of radiation resulting from nuclear activities” (Council, 1975). Yet, despite the existence of the Euratom Treaty and political agreement to work towards harmonisation in the area of nuclear safety, it was however difficult to pursue Community rules and standards in the early days of the civil nuclear programmes (CEC, 1993).

The main consultative bodies to work towards progressive harmonisation were the Reactor Safety Working Group (RSWG), bringing together representatives of the national safety authorities and their technical support organisations, plant operators and

manufactures, and the Nuclear Regulators' Working Group (NRWG), consisting of national regulatory, licensing and control authorities. Both were Commission working groups. From the Commission's point of view these groups should have enabled "systematic cooperation and concertation with the parties responsible for nuclear safety in the Member States" (CEC, 1993: 13).⁴⁵ RSWG was abolished in 1998 and unfinished work was taken over by NRWG⁴⁶ (Council, 2006e). NRWG aimed mainly to contribute to the harmonisation of methods and practices in Member States on the basis of best practice. It did not deal with specific safety standards. It mainly served as a forum to take a European perspective on issues that were similarly discussed in international fora such as the International Atomic Energy Agency (IAEA) and the OECD's Nuclear Energy Agency (NEA). The NRWG saw its work as a "convergence process, i.e. harmonisation through consensus on common positions, not through mandatory legal ways, leaving to each National Safety Authority the responsibility to adapt national regulations" [emphasis in original] (CEC, 2002c: 30f). Indeed, for the Commission, the "network built by the NRWG members is somewhat in the heart of a harmonisation process" (CEC, 2002c: 7).

In the light of the transformation in Central and Eastern European countries after 1989, the main objectives of the 1975 Council Resolution were reiterated in a Council Resolution in 1992 where Member States were requested "to ensure greater concerted effort between the national safety authorities in the Community on safety criteria and requirements on the incorporation of the conclusions reached into the practice followed in the Member States, in order to arrive at a system of safety criteria and requirements recognized throughout the Community" (Council, 1992b). This resulted in the establishment of new working groups such as CONCERT (CONCortation on European Regulatory Tasks) and RAMG (Regulatory Assistance Management Group). CONCERT supported the cooperation between nuclear safety authorities in candidate countries; RAMG assisted with the coordination of nuclear safety authorities in Central and Eastern European states and Newly Independent States.

⁴⁵ Until 1992 NRWG was called WG1A and RSWG was called WG1B. They were both created by the Commission in 1972 as advisory working groups. For more information on the history of NRWG (and to a lesser extent RSWG) see (CEC, 2002c).

⁴⁶ NRWG was abolished in 2005 (see below).

In the field of radioactive waste management, Community level activities have been ongoing since 1973 when the Community Environmental Programme underlined the need for Community measures covering the “particular case of the handling and storage of radioactive waste” (Forsström and Taylor, 2000). A first Community Action Plan was approved by the Council in 1980 and extended in 1992 until 1999. One requirement of the action plan was that the Commission should produce regular reports on the situation of and prospects for nuclear waste in Member States. The fourth and last report before the publication of the nuclear package was published in 1999 (CEC, 1999a). It discussed potential areas of harmonisation at Community level such as definition and classification of radioactive waste and the financing of radioactive waste management. A number of external studies on elements of this strategy were commissioned which “could form the bases for draft Council Directives” (CEC, 1999a: 5) in this policy field.

In 1994 the Commission presented a Community strategy for radioactive waste (CEC, 1994), which envisaged “an approach towards harmonization at Community level, where practicable, of the radioactive waste management principles” on the grounds of nuclear safety and environmental protection. The proposed strategy referred to the following elements that could benefit from a Community approach: definitions and classifications of radioactive waste, the minimisation of radioactive waste, the transport of radioactive waste, the treatment and disposal of radioactive waste, public information, and the financing of radioactive waste management.

In 1992 the Council had adopted a Council Directive on shipments of radioactive waste between Member States into and out of the Community that sought compliance with Community and national provisions, and with international agreements on the transport of radioactive material (Council, 1992a). This was updated in 2006 (Council, 2006d) – also in the light of the IAEA Joint Convention on spent fuel and radioactive waste management.

5.2.3 IAEA Conventions on nuclear safety and radioactive waste management

Nuclear safety and radioactive waste management were also subject to international conventions within the IAEA framework: the Convention on Nuclear Safety (CNS) (IAEA, 1994), and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste management (JC) (IAEA, 1997). These frameworks

strongly affected activities at the Community level and are therefore discussed in more detail.

The CNS was adopted in 1994 and came into force in 1996. It includes obligations related to siting, design, construction, operation, the availability of adequate financial and human resources, the assessment and verification of safety, quality assurance and emergency preparedness of nuclear power plants (Art. 6-19). It is an incentive instrument without direct controls and sanctions involved. Parties commit themselves to high levels of nuclear safety; they have to produce national reports on the implementation of their obligations and how they addressed issues raised in the previous review meeting. These reports are subject to a peer review procedure during regular review meetings of the Parties; these are held every three years. The main issues addressed are related more to regulatory and legislative issues than technical details. All EU Member States with nuclear power plants are member of the CNS.⁴⁷

The JC was adopted in 1997 and entered into force in 2001. It constitutes the first international document with obligations on spent fuel and radioactive waste resulting from civilian nuclear reactors and applications that are managed under civilian programmes. Contracting parties are obliged to produce reports on the measures taken to implement the obligations of the JC (Art. 4-28). Although obligations are based on IAEA Safety Standards, there are no standards specified which need to be considered in national reports or during the review process. Parties' reports are subject to peer-review at review meetings that take place every three years. Although obligations under JC are binding in states that have ratified the JC, it is also an incentive instrument based on peer-review mechanisms without real sanctions. All EU Member States with the exception of Malta are parties to the JC.⁴⁸

5.2.4 Summary: cooperation at the Community level

Since the early 1970s several initiatives have been launched at the Community level to enable information exchange on nuclear safety and radioactive waste management with

⁴⁷ More information on the CNS can be found in the final report of Subgroup 1 of the Working Party on Nuclear Safety (Annex 1) (Council, 2006e).

⁴⁸ While the IAEA's conventions set requirements with reporting requirements in relation to nuclear activities, the OECD's Nuclear Energy Agency provided a framework for technical expertise on nuclear related issues. EU advisory groups such as the NRWG intended to provide a European perspective that is complementary to the NEA's international technical committees' work (CEC, 2002c).

the view of developing a more coordinated approach to these issues. These initiatives were based on the involvement of national actors including national nuclear authorities and plant operators. The emphasis was on cooperation and developing a common understanding based on consensus rather than mandatory legislation. In parallel, at the international level, conventions were agreed and ratified that included binding obligations but were incentive instruments based on peer review without enforcement mechanisms. Against this background of reporting and information exchange requirements, the Commission's nuclear package constituted a radical change in Community nuclear energy policy.

5.3 Policy initiation: a window of opportunity?

Since the early 1990s nuclear safety and radioactive waste management increasingly attracted public and political attention in Europe. In particular it was the transformation process in Central and Eastern Europe that brought the issue of nuclear safety and radioactive waste management back on the international and European agenda (see also 5.2). However, there was no consensus within the EU on the most appropriate response to this challenge.

Member States, the Commission and the EP, as well as nuclear regulators tried to push for their own policy objectives. Four issues were predominant at the stage of policy initiation: the lack of common nuclear safety standards at the Community level, the long-term security of EU energy supply, public concerns related to nuclear energy and market distorting effects of decommissioning funds. For a chronological overview of the policy process related to the nuclear package see Appendix A.

5.3.1 Contextual factors and emerging issue definitions

Since the early 1990s nuclear safety in Eastern Europe had been a major concern within the EU. The Commission, as negotiator with candidate countries for EU membership, played an active role in dealing with nuclear safety standards outside the EU (e.g. von Sydow, 1995; CEC, 1998c; 2000a), but did not have an equivalent role inside the EU where nuclear safety standards were dealt with at the national level. In this context it was argued within the Commission that the enlargement process underlined the need for new legislation in this field to formalise the Commission's role within the EU (Interview 3). This view was not shared by all Member States in the Council.

The European Council first discussed nuclear safety in the enlargement context under the Austrian Council Presidency at the Vienna European Council in 1998 (European Council, 1998). The Austrian initiative had already been prepared under the preceding UK Presidency who wanted to ensure that the Council would lead any assessment process (Interview 9). The Helsinki Presidency conclusions in 1999 underlined “the importance of high standards of nuclear safety in Central and Eastern Europe” and called on the Council “to consider how to address the issue of nuclear safety in the framework of the enlargement process in accordance with the relevant Council conclusions” (European Council, 1999b: para. 7).

Thus, both Commission internal discussions and Council conclusions pointed to the importance of nuclear safety in the context of the enlargement process. However, the Commission and some Member States diverged on whether this should result in new legislative proposals at the EU level, and thus to a competence shift from the national to the Community level. The Commission was of the opinion that its responsibility for nuclear safety standards should not be limited to outside the Community where its responsibility was accepted as part of its role as negotiator with candidate countries for EU membership, but – reinforced by the experience during the enlargement process – extended to the Community area and therefore to all EU member states. This view was also underlined in the Commission’s Green Paper on security of energy supply putting forward additional justifications for action, namely security of energy supply and climate change (CEC, 2000b).

Due to concerns about the EU’s long-term energy supply balance, nuclear energy was considered as an important energy source enabling the EU to become more independent from high and volatile fossil fuel prices. In addition it was framed as an important contribution in achieving the EU’s climate policy objectives: “concerns about global warming have changed the perception of energy supply constraints” and this was “particularly pertinent for nuclear energy” (CEC, 2000b). The Commission communication therefore argued that nuclear energy needed to be kept open as a policy option for Member States who wished to use this energy source. It noted that nuclear energy could only develop if “[...] the waste issue finds a satisfactory solution with maximum transparency” (CEC, 2000b: 34). The final report to the Green Paper in 2002 concluded that “one major lesson to be drawn from the Green Paper debate is that the

future of this industry depends on finding a clear and unequivocal answer to the question of the processing and transportation of radioactive waste” (CEC, 2002b). It also referred to the need for common standards of nuclear safety within the EU.

From the Commission’s point of view, one major barrier for nuclear energy within the EU was public concern over nuclear safety and radioactive waste management. From the early 1990s the EU was confronted with low levels of public acceptance for nuclear power. Eurobarometer surveys showed that, during the 1990s, nuclear energy was increasingly associated with “unacceptable risk” and should therefore be abandoned (e.g. CEC, 1997c: 34ff). Based on a survey from 2002 about different safety related policy issues, the Commission argued that public action in the area of nuclear safety and radioactive waste management was considered as among the most important issues for EU citizens in the context of energy technologies (CEC, 2002a: 74).

In addition to concerns related to nuclear safety and radioactive waste management, in 2002 the EP asked the Commission to deal with the potentially market distorting effects of decommissioning funds using the discussion on the second energy market liberalisation package. In its first report to the second electricity market directive, the EP adopted an amendment that called for separate accounting for decommissioning funds on the grounds of fair competition (amendment 68) (EP, 2002a). It was argued that this was relevant in the context of the internal energy market because some European energy companies used their decommissioning funds to finance takeovers that were considered to be a potential distortion to a fully competitive energy market. This was also reiterated in the recommendations for the second reading of the second energy market liberalisation package in April 2003 (amendment 18) (EP, 2003).

In addition, the EP achieved the publication of both an interinstitutional statement and a Commission statement in the Official Journal to underline the importance of this issue.⁴⁹ The common statement of the three institutions underlined the need for these funds to be “actually available” for their purpose, and the need for them to be managed in a transparent way without interfering with fair competition in the energy market. In its

⁴⁹ Statements made with regard to decommissioning and waste management activities, OJ L 176, 15/07/2003, p. 56.

statement the Commission committed itself to publish an annual report on the use of decommissioning and waste management funds.

5.3.2 *Institutional venues and dominant issue definitions*

Against this background, policy entrepreneurs were looking for appropriate institutional venues with the aim of restricting and enabling actors' access, and thus influencing dominant issue definitions in favour of their policy goals. Some Member States, supported by their national nuclear regulators, tried to avoid any competence shift from the national to the Community level, whereas the Commission, supported by an ECJ ruling, was building the case for new policy proposals.

In response to the European Council's Helsinki conclusions, in July 2000 COREPER mandated the WPAQ to provide an overview of the *acquis* in place and to elaborate a methodology for the assessment of nuclear safety in candidate countries (Council, 2000b). For the assessment process the Council established an ad hoc Working Party on Nuclear Safety (WPNS) that consisted of experts from national regulators (Council, 2000c). By the establishment of the Council-led WPNS the Council stressed that nuclear safety is a national competence since the "Euratom Treaty does not offer a specific legal basis for the establishment of safety standards for nuclear installations" (Council, 2000c: 9). The WPNS' assessment process, however, revealed a major challenge: the absence of Community nuclear safety standards that could have been used to assess the nuclear safety situation in candidate countries. Instead, experience of national nuclear regulators and the IAEA standards had to be used as the basis for the evaluation of nuclear safety in candidate countries. The report was finalised in mid-2001 (Council, 2001).

The Commission used the lack of common nuclear safety standards as an important justification for legislative action in this field. In order to underline its competence claim, the Commission was not prepared to leave the assessment of nuclear safety in candidate countries to the Council-led WPNS. Instead, referring to the European Council's Cologne conclusions from 1999, where the Commission was asked to include a statement on nuclear safety in its annual reports on the progress in candidate countries (European Council, 1999a: para. 60), the Commission established its own parallel assessment process. This was not, however, welcomed by national regulators. After it

became clear that the national regulators' technical service organisations were not prepared to conduct this assessment on behalf of the Commission, the Commission had to contract a consortium of private organisations to carry out this assessment (Interview 13).

The struggle between some Member States and the Commission strongly underlined the tensions between the national and Community level on the issue of common nuclear safety standards. As will be seen later in the analysis, this conflict was incorporated in different institutional venues enabling and restricting actors' access as well as influencing dominant problem definitions.

The Council-led assessment process was strongly supported by the Western European Nuclear Regulators Association (WENRA), representing national nuclear regulators within the EU plus Switzerland. WENRA had been created in 1999 with the following objectives (WENRA, 2000: 3): to develop a common approach to nuclear safety and regulation, in particular within the EU; to provide the EU with an independent capability to examine nuclear safety and regulation in candidate countries; and to evaluate and achieve a common approach to nuclear safety and regulatory issues. One of WENRA's initial objectives was to contribute expert knowledge to the assessment process of nuclear safety in candidate countries. This was because the discussions at the time were perceived to be based on political rather than technical views (Interview 16).

The ad hoc WPNS granted institutional access and allowed WENRA to establish itself as a leading player in the assessment process of candidate countries (Interview 9). WENRA's chairman, André Lacoste from the French nuclear regulator, underlined the importance of this institutional access for WENRA's future role in this policy process: it was "the beginning of an officialization" of WENRA (MacLachlan, 2000a: 13). There was clearly antagonism between WENRA and the Commission. WENRA contributed to the Council's assessment process but not to the Commission's parallel assessment process. Commission officials perceived WENRA as a means used by Member States to defend nuclear safety as a national competence, and to oppose new nuclear safety proposals at the Community level (Interview 3, 4, 5).

National nuclear regulators underlined their opposition to any competence shift from the national to the Community level in the field of nuclear safety. In 2000 DG ENV, the DG then responsible for nuclear safety, established a European Nuclear Installations Safety Group (ENISG) with the aim of developing nuclear safety indicators on the basis of an open process, including all relevant stakeholders such as national regulators and power companies. Regulators were, however, strongly opposed to the idea and clarified that they would “step up efforts to counter any attempt by the EC [the Commission] environment staff to monopolize the nuclear safety issue” (MacLachlan, 2000b).

Early discussion of a Commission initiative in this field was interpreted as “sandwiching regulatory authorities between their national governments and the commission” (MacLachlan, 2000b). According to the Commission official responsible for ENISG, the “ultimate aim is to have a group that can promote harmonization of nuclear safety approaches EU-wide when central and eastern European countries start joining the Union” (MacLachlan, 2000c). ENSIG as an institutional venue was intended to help the Commission to make progress in nuclear safety at the Community level, whereas WENRA served exactly the opposite purpose, i.e. to prevent progress at the Community level that was against its own timetable.

Discussions in the Council also highlighted different views among Member States. A group of countries led by Austria were strongly in favour of a common nuclear safety approach as reflected in the Laeken summit conclusions 2001 (European Council, 2001). As a follow-up to the assessment process the European Council called for regular reports on nuclear safety. It was however underlined that these reports should be the responsibility of national experts and not of the Commission as intended by Austria. Austria, Ireland and Luxembourg proposed a declaration that aimed at establishing EU nuclear safety standards under the Commission’s responsibility. This was rejected by the UK, Finland and France, among others. In October 2000, Austria had already called for binding nuclear safety standards with the aim of harmonising them (Council, 2000a). Community action in the field of nuclear safety was also supported by the EP’s Rübig report (EP, 2002b).

These developments indicate a strong conflict of power and competences between the Commission, national regulators and some Member States. Despite the support for

Commission action in the field of nuclear safety by Member States such as Austria, Ireland and Luxembourg, the Council statements indicated that a few were keen to keep nuclear safety as a national competence. Nevertheless, the general objective of high nuclear safety standards in an (enlarged) EU was shared by all Member States as expressed in the Laeken conclusions. The Commission, however, was not prepared to accept the situation that it considered to be insufficient to guarantee a high level of nuclear safety within an enlarged EU.

The Commission tried to use a ruling by the ECJ in December 2002 to substantiate its position legally. This ruling was the consequence of a struggle between the Commission and the Council on the Community competences in the field of nuclear safety that emerged in the context of the ratification of the IAEA's CNS. In 1998 the Council approved the accession of the EAEC to the IAEA's CNS only with a written declaration that the Community's accession was limited to certain articles of the CNS. This was contested by the Commission who brought the issue to the ECJ in 1999 and asked for the partial annulment of the declaration because, from the Commission's point of view, it constituted an unjustified limitation of the Community's competences in this area.⁵⁰

In the subsequent ECJ process, both the Advocate General's opinion and the ECJ ruling could be interpreted by the Commission as broadly confirming its position, i.e. that, under Title II, Chapter 3 "Health and Safety" of the Euratom Treaty, the Commission has jurisdiction in the field of nuclear safety and not only in a very restrictive area as argued by the Council. The ECJ's Advocate General concluded in his opinion in 2001 that: "According to the current understanding of the health and safety provisions of the Euratom Treaty there is a significant overlap between radiation protection and the safety

⁵⁰ The Commission requested under Art. 146 of the Euratom Treaty the partial annulment of the unpublished Council Decision of 7/12/1998 approving the accession of the EAEC to the CNS. The Commission's proposal submitted to the Council on 15/09/1994 had declared, first, that Articles 1 to 5, 7 and 14 to 35 of the CNS apply to the Community and, second, that the Community possesses competences in the fields covered by Articles 1 to 5, 7 and 14 to 19 of the CNS. By contrast, the Council declared "that Articles 15 and 16(2) of the Convention apply to it [the Community]. Articles 1 to 5, Article 7(1), Article 14(ii) and Articles 20 to 35 also apply to it only in so far as the fields covered by Articles 15 and 16(2) are concerned. The Community possesses competence, shared with the abovementioned Member States, in the fields covered by Articles 15 and 16(2) of the Convention as provided for by the Treaty establishing the European Atomic Energy Community in Article 2(b) and the relevant articles of Title II, Chapter 3 "Health and safety". The ECJ ruled that it "1. Annuls the third [above quoted] paragraph of the declaration "in so far as Articles 7, 14, 16(1) and (3) and 17 to 19 of that convention are not referred to therein" (ECJ-C 29/99). As a result, a revised declaration was deposited with the IAEA in May 2004.

of nuclear installations” (ECJ, 2001b: para. 210). It was therefore argued that no clear distinction was possible between radiation protection, which is covered under Chapter 3 “Health and Safety” under Euratom, and the safety of nuclear installations.

The Advocate General’s opinion was largely confirmed by the ECJ ruling in December 2002, which concluded that “it is not appropriate to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation” (ECJ, 2002). From the Commission’s viewpoint, this served as a strong jurisdictional basis to put forward a new legislative initiative in this policy field. The Advocate General’s opinion served as an important basis for the new directive on nuclear safety as reflected in the Commission’s communication in November 2002 (CEC, 2002d) (Interview 3, 13). Although Member States opposed to the Commission policy could still question the jurisdictional basis of new legislative action in this policy field, this argument was weak and had to be backed up by other arguments (Interview 15). As in other areas of EU policy making ECJ rulings were invoked by the Commission to assist its attempts to extend its competences (Tömmel, 2008b).

5.3.3 *Summary: filling the gap*

Issue initiation of the nuclear package process was a mixture of low and high politics dynamics. At the level of high politics, i.e. European Council summits, the issue of nuclear safety was brought to the agenda by the Austrian Presidency in the context of the enlargement process in 1998. This issue was subsequently picked up in the Cologne, Helsinki and Laeken summit conclusions. Nuclear safety was recognised as an integral part of the enlargement process. A split between Member States was however already apparent at the time: some Member States wanted the Commission to be responsible for the dossier whereas others were keen to emphasise that nuclear safety was not a Community but a national responsibility.

The Council and the Commission incorporated their competence claims in institutional venues. By establishing the ad hoc WPNS, the assessment process was Council-led and national regulators informally organised within WENRA gained a central role in this process. To avoid being marginalised, the Commission initiated a parallel process with a consortium of private organisations and ensured a favourable issue framing around the absence of Community standards for nuclear safety that could be applied throughout an

enlarged EU. In addition the Commission's DG ENV established another forum, ENSIG, to progress towards harmonised safety standards. This was, however, rejected by national regulators.

The Commission's position was considerably strengthened by the Advocate General's opinion and the ECJ ruling. Member states could no longer refer only to the insufficient jurisdictional basis in this policy area to prevent new Community legislation. While the legal back-up by the ECJ served as an important trigger for the Commission, the enlargement process may have been used as a justification for the publication of the NP: "[...] the Commission has used the enlargement as a tool to make the directives more acceptable for the Member States. Nuclear safety and the enlargement have been harnessed to back up the Commission's political purposes" (House of Lords, 2006b: 59).

Against this contextual background the Commission could develop different issue definitions to justify the nuclear package. With respect to EU enlargement it could be argued that the key problem was the lack of common safety standards. The IAEA CNS could be questioned as being an insufficiently robust legal instrument due to its incentive-based peer review character. Another problem dimension emerged from the Green Paper, i.e. the lack of public acceptance of nuclear power threatening the future of nuclear energy in the EU and thus – according to the Commission's analysis – the long-term security of energy supply in the EU and the achievement of the EU's climate targets. A further issue definition was put forward by the EP: potential market distorting effects of decommissioning funds in the internal energy market.

While the first three problem definitions were broadly related to nuclear safety, the fourth was related to internal market issues. Each had different institutional implications: nuclear safety had to be based on the Euratom Treaty, whereas internal market issues and environmental concerns (e.g. climate change) were covered in the EC Treaty. Thus, despite an "asymmetrical distribution of influence through institutional structures" (Jann and Wegrich, 2007: 46) under the Euratom Treaty, the EP was able to put a nuclear energy-related issue on the political agenda via another institutional route.

5.4 Issue specification: the nuclear package proposal 2002/2003

In January 2003 two directive proposals were transmitted to the Council as the nuclear package (CEC, 2003d):

- Draft proposal for a Council Euratom Directive “Setting out the basic obligations and general principles for the safety of nuclear installations” (or briefly “Safety Directive Proposal”) including provisions for decommissioning funds;
- Draft proposal for a Council Euratom Directive “The management of spent nuclear fuel and radioactive waste” (or briefly “Waste Directive Proposal”).

The main points of the January 2003 version of the proposed “Safety Directive Proposal” can be summarised as follows:

- Member States must ensure it has a safety authority, which is independent from bodies that promote or utilise nuclear energy.
- The safety authority shall regulate and supervise safety of nuclear installations and grant the necessary licences.
- Member States shall require the operator to run the facility in accordance with ‘common safety standards’ and give priority to nuclear safety.
- Member States to ensure that the regulator carries out nuclear safety inspections.
- Member States shall take the appropriate steps to ensure adequate financial resources are available to support the safety of facilities.
- Member States shall require the establishment of procedures by the safety authorities to deal with operating incidents and accidents.
- The establishment of a verification system by the Commission to ensure that national safety authorities comply with the above principles. These verifications to be carried out by experts from another Member State approved by the Member State. The Member State concerned would be informed in advance of the verification.
- Member States are required to submit annual reports to the Commission.
- The Commission is required to submit a report to the Council and EP every two years.

It was envisaged that the Commission would be responsible for a verification process on the basis of a peer-review process.

Another central element of the “Safety Directive Proposal” was the treatment of decommissioning funds. The proposal called for operators to build up sufficient decommissioning funds during the operating lifetime of the nuclear installation. In its annex the proposal included minimum criteria for decommissioning funds. A central criterion was the distinction between operators’ internal and external funds. Decommissioning should be managed separately, thus being ring-fenced to guarantee the availability of the funds when they were actually needed. The provisions included an opt-out for national particularities: “The present proposal leaves a great deal of the detail concerning the size of the funds, how they are to be collected and how they are to be managed to the individual Member States” (Taylor, 2003). The Commission defended its approach as reasonable given the variety of financing schemes that were in use throughout the EU. Harmonisation was therefore considered as only a long-term objective in response to the strong scepticism put forward by Member States (Interview 4).

The “Waste Directive Proposal” proposal required each Member State to define and implement a programme for all radioactive waste management under its jurisdiction. The provisions had to cover all stages of radioactive waste management, including its disposal. For each step in the process the programme should include a strict timetable following a pre-set timetable by the Commission. Authorisation for the development of disposal was to be given by 2008, for the operation of short-lived low and intermediate level radioactive waste disposal sites by 2013 and for the operation of disposal sites for high-level and long-lived radioactive waste by 2018. On the basis of this programme, Member States would have had to publish a report every three years and this would be assessed by the Commission and national experts, followed by the publication of a report by the Commission. Geological disposal was considered as the best practice among the disposal methods available.

This brief summary of the key elements of the nuclear package underlines the ambition of the Commission proposals. They would have resulted in a clear expansion of Community competences in the field of nuclear safety and radioactive waste management. The clear indication during the assessment process of candidate countries that some Member States would be strictly opposed to any competence shift in the area

of nuclear safety raises the question as to what extent this scepticism was addressed during policy specification. It relates to key research questions summarised in Table 2: did the Commission try to build winning coalitions by building consensus and selling proposals (Wendon, 1998; Nugent, 2006; Pallis, 2006)? Were existing advisory groups used to gather independent information and to build legitimacy (Marks and Hooghe, 1996) (see 3.3)?

This section argues that the Commission did not seek to sell its policy proposal to Member States, but followed a confrontational approach to issue specification. The empirical analysis shows that, instead of pre-testing policy ideas and issue definitions, the Commission opted for the exclusion of almost all relevant actors during issue specification. Unclear issue definition resulted in rather vague policy proposals. Existing institutional venues that could have provided input to the formulation process, and thereby legitimacy, were ignored and eventually discontinued. This procedural weakness was complemented by, and resulted in, an incoherent policy proposal as regards its content and jurisdictional basis.

5.4.1 Policy entrepreneurs: the Commission as formal agenda-setter

During issue specification the Commission was the central policy entrepreneur. Commission officials' motivation to propose the NP can be explained on the basis of Kingdon's concept of expected material and purposive benefits (Kingdon, 1995 [1984]) (see 3.2.3). The nuclear package would have resulted in a competence gain for the Commission (material benefit). Moreover new legislation on the basis of Euratom would have underlined its significance more than 50 years after its adoption. This was of importance as the validity of the Euratom Treaty was questioned in the framework of the European Convention (The European Convention, 2003). In addition key players in DG TREN, including Commissioner de Palacio and Director-General Lamoureux, were convinced that nuclear energy was an important energy source for ensuring a secure and competitive low carbon energy supply in the EU (purposive benefits) (Interview 3, 4, 13). In 2000 de Palacio argued that the EU could "never respect the environmental undertakings of Kyoto without nuclear energy" (Agence Europe, 2000). Finally, the nuclear package was considered by the Commission as a means of increasing public acceptance of nuclear energy (Waeterloos, 2003).

Commission officials drafted the nuclear package in a very short time period, and it was not discussed officially with stakeholders during the drafting process (Interview 4, 13). Participants in the process agreed that Member States were taken by surprise when the Commission published the nuclear package. Due to the absence of any pre-consultation, the Commission's approach was perceived as "very brutal [...] There was mistrust and this could not be changed" (House of Lords, 2006a: 29). Independent of their position on the nuclear package (supportive or opposed) many participants strongly emphasised the fact that the Commission did not consult sufficiently with Member States before the publication of the nuclear package (Interview 8, 9, 11, 14, 18, 19, 23, 24, 25). This fundamentally influenced the subsequent policy discussions (Interview 23, 24).

The Commission scarcely made any attempt to discuss its ideas with Member States – with the exception of France – either at the political or technical level (Interview 3, 13, 18). Industry was – with the exception of the French nuclear industry – also mostly excluded from the drafting process (Interview 8, 10). It seemed as if support from the nuclear industry was assumed (Interview 10). The non-involvement of regulators and industry that had to deal with outcomes weakened the nuclear package and also justified its rejection (Interview 23).

Besides the nuclear industry, national nuclear regulators with a strong influence on their national governments (see below) were not consulted during the drafting process. Instead early drafts of the proposal prompted mistrust against national regulators (Interview 18) and the idea of a European nuclear regulatory body – although never written down – created resistance among national authorities (Interview 19). Early drafts of the nuclear package were leaked to national regulators, most of whom lobbied their national governments to oppose the nuclear safety proposal before governments had seen the proposal themselves. The exclusion of national nuclear authorities with their technical expertise in this field raised questions about the technical knowledge underpinning the proposals. WENRA decided not to respond to the nuclear package because it was considered to be of poor quality written by lawyers without any expertise in the topic (Interview 16).

Doubts and mistrust in the Commission's nuclear package among some Member States were reinforced by unclear propositions in the final stages of issue specification. After

strong opposition to the initial proposal was expressed by some Member States and their nuclear regulators, the Commission weakened its proposal before submitting it officially to the Council. Nonetheless, the underlying long-term intentions by the Commission had been spelled out, i.e. a legally binding Community regime in the field of nuclear safety. The version of the “Safety Directive Proposal” published in November 2002 (CEC, 2002d) was drafted as a framework directive, and clearly indicated that the Commission only saw this initiative as a first step to be followed up by legally binding operational standards:

“Initially, the Community system will be based on a corpus of minimum standards. However, it will establish a legal framework comprising a mechanism allowing the standards to evolve. One of the first tasks of the Article 31 Committee will therefore be to work out a corpus of legally binding operational standards, on the basis of the abovementioned studies, which can serve as a common reference point.” (CEC, 2002d: 15)

By contrast, the January 2003 version of the “Safety Directive Proposal” omitted any reference to “a corpus of legally binding operational standards” and was rather vague in its final purpose:

“The Community system will be based on basic obligations and general principles. It will establish a legal framework comprising a mechanism allowing an evolution.” (CEC, 2003d: 5)

It was argued that, “a Community approach to the safety of nuclear installations does not necessarily entail laying down detailed technical safety standards” (Council, 2003f: 3).

Instead of defusing concerns about the Commission’s long-term intentions, they were reinforced by Commission officials: when the nuclear industry expressed doubts about the nuclear package to the Commission, Commission officials replied that this would only be the first step and the technical details would follow on the basis of the IAEA guidelines (Interview 8). An official from a Member State opposed to the nuclear package expressed the view that this would have meant supporting something without a

clear idea of where the process would end (Interview 24). It would have empowered the Commission for further action without knowing what follow-up measures would be proposed and subsequently potentially implemented; it would have ultimately entailed transferring the interpretation of EU nuclear safety standards to the ECJ (Interview 24).

Most importantly, the “Safety Directive Proposal” did not address key issues with respect to its implementation. While the January 2003 version aimed for Community safety principles rather than standards, it still envisaged the establishment of a Community framework without detailing how this would be achieved. It reflected the initial approach of a framework directive without explaining a potential follow-up process. It was generally acknowledged that it would be very difficult to develop common standards or principles given the variety of operating nuclear reactor designs in Member States (Interview 3). Moreover, the “Safety Directive Proposal” was drafted on the basis of the IAEA safety conventions that were not considered to be suitable to serve as the basis for Community legislation (Interview 3). With the “Waste Directive Proposal” the major objections related to pre-set timetables for national waste management programmes and the preference for geological disposal. Finally, the Commission’s decision to set the enlargement date, 1 May 2004, as the deadline for the adoption of the nuclear package was perceived as creating unnecessary time pressure.

To sum up, the Commission did not seek to sell its ideas to Member States and other stakeholders in order to build ‘winning coalitions’. This created mistrust that was reinforced by the exclusion of nuclear regulators and the nuclear industry from the drafting process. Unclear propositions were also reflected in the issue definitions brought forward by the Commission.

5.4.2 Issue definition: limiting actors’ access

The Commission tried to justify the nuclear package as a response to various problems that were pertinent at the time. Instead of pre-testing the variety of problem definitions and identifying the most convincing one(s) among relevant stakeholders in order to build winning coalitions, the Commission launched the nuclear package on the basis of a mixture of problem definitions that responded to institutional and contextual factors. The justification for the nuclear package related mainly to the policy context at the time (see 5.3.1): different levels of nuclear safety within an enlarged EU (enlargement), long-

term EU energy security (Green Paper 2000), public acceptance of nuclear energy (Eurobarometer), and market distortion (energy market liberalisation).

This was reflected in the Commission's presentation of the NP to the Council's WPAQ in January 2003. Three policy priorities were highlighted (Council, 2003a): first, improving the security of energy supply by contributing to maintaining nuclear energy as one of the possible generation options, and thus implicitly referring to the need to increase public acceptance; secondly, ensuring the safety of installations in an enlarged Union through binding Community standards; finally, contributing to a genuine European energy market, including nuclear fuels, and providing a level playing field for its actors.

The importance of framing during issue specification of the nuclear package is well illustrated by the issue of decommissioning funds. The Commission initially drafted three separate directives on nuclear safety, radioactive waste management and decommissioning funds (de Esteban, 2002: 6), but these were virtually not discussed outside TREN. Before the launch of the Commission's inter-service consultation, it was decided by DG TREN's hierarchy to integrate the provisions of decommissioning funds into the "Safety Directive Proposal" (Interview 3, 13). This was strongly criticised by MEPs since it marginalised the EP in the decision-making process (Interview 3).

As a result of the merger of the safety and decommissioning draft directives, decommissioning funds provisions were not based on the EC Treaty's internal market provisions (and thus subject to co-decision procedure as intended by the EP) but on the Euratom Treaty. This ensured that the traditionally anti-nuclear EP was put in a consultative role. As the Euratom Treaty did not provide any relevant provisions on financing, the provisions on decommissioning funds had to be framed as a matter of nuclear safety. This was strongly contested by opponents to the nuclear package (e.g. Hohlefeldt, 2003). From the very beginning it was felt by participants that this problem definition was difficult to sustain (Interview 4, 8, 13). This scepticism was confirmed by the Council's legal service who questioned whether decommissioning funds provisions could be based on the Euratom Treaty (Council, 2006f: 17).

5.4.3 *Institutional venues: neglected advisory groups and internal reorganisation*

Institutional venues can enable and restrict actors' access to the decision-making process (Baumgartner and Jones, 1993). The integration of decommissioning funds in the nuclear "Safety Directive Proposal" on the basis of the Euratom Treaty marginalised the EP in the decision-making process. In addition to this strategic institutional venue choice, two factors related to institutional venues influenced issue specification: first, the non-involvement of the Commission's nuclear related advisory groups and thus the exclusion of existing institutional venues; second, institutional changes within the Commission that reinforced DG TREN's role as key institutional venue responsible for the nuclear package within the Commission.

Since the early 1970s the Commission had established several nuclear related advisory groups consisting of national experts on nuclear safety and radioactive waste management: the NRWG, ACPM and (more recently) ENSIG (see 5.2.2). These groups consisted of representatives from national nuclear regulators and the nuclear industry. The Commission, however, made no explicit use of this established network of advisory groups. Bringing together national experts on radioactive waste management, the ACPM had been discontinued in 2001 shortly before the drafting process started (Interview 13). The long-standing NRWG on nuclear safety was virtually not involved in the drafting process (Interview 13, 18) and was also later abolished. Participants suggested that one reason for their abolition was that they did not support the Commission's objectives of radical policy change (Interview 18, 25), preferring incremental policy change which built on ongoing processes that did not necessarily lead to legislation in the short-term (Interview 13). Moreover, by abolishing existing groups the Commission wanted to avoid parallel processes (Interview 20) that would divert attention from its own policy agenda.

Neglecting these groups of experts had several impacts on the subsequent policy process. This exclusion of expertise weakened the authority and legitimacy of the nuclear package. In addition, these institutional venues could have served to pre-test ideas for new legislation and to develop a more convincing policy strategy. This was because the experts were very well aware of national positions and thus national perceptiveness to any new legislative proposals in this area. Experts from national nuclear regulators were very influential in determining national positions to any new

proposals as will be shown below. Not integrating them in the drafting process resulted in a confrontational constellation between the Commission and nuclear regulators because they felt excluded from the drafting processes of a major piece of EU legislation that would fundamentally impinge upon their work. A senior Commission official expressed the view that these advisory groups could have been a source of strength for the Commission by taking advantage of their technical expertise, the Commission could have used them to generate support for the nuclear package (Interview 13) and thus contribute to the legitimacy of the proposals.

The policy initiation approach by the Commission can partially be explained by the policy style of the leading figures within DG TREN. Energy Commissioner de Palacio, Vice-President of the Commission and in charge of the relations with the European Parliament, and her Director-General Lamoureux, were considered as very powerful players within the Prodi Commission and could push their proposals through (Interview 4). Lamoureux was, in general, strongly in favour of legislative approaches instead of consultations or voluntary working programmes (Interview 11, 13). Their willingness and ability to propose legislative measures in the fields of nuclear safety and radioactive waste management was supported by a Commission internal reorganisation in 2000.

Until 2000 DG ENV and DG TREN shared responsibilities on nuclear related issues within the Commission and had quite contrasting positions on nuclear energy. While DG ENV was rather sceptical of nuclear energy, DG TREN was supportive of nuclear energy as reflected in the above quoted policy statements by the Commission since the early 1970s (see 5.2.2). The role of nuclear energy was, for example, contested between both DGs until the very last minute before the adoption of the 2000 Green Paper on security of supply (European Report, 2000) (see also 5.3.1). Shared nuclear competences between DG TREN and DG ENV, with their different positions on nuclear energy, required more intensive Commission internal discussions and might have contributed to a more balanced approach to nuclear issues by the Commission (Interview 8). However, in 2000 the Commission restructured the responsibilities for nuclear energy. As a result of this reorganisation virtually all nuclear competences were put under the responsibility of DG TREN “in order to provide for an appropriate concentration of staff and expertise” (CEC, 2000a: 16f). Consequently DG TREN, with

sole responsibility for nuclear related policy proposals, could take bolder positions on nuclear energy (Interview 11). This was reflected in the nuclear package.

5.4.4 Summary: formal strength turned into informal weakness

Member states and stakeholders were generally not consulted but taken by surprise when the nuclear package was published in November 2002 and officially transmitted to the Council in January 2003. Existing long-standing Commission advisory groups with national experts were not integrated in the policy process either. Mistrust regarding this process and the Commission's objective of radical policy change affecting national competences were reinforced by a lack of clarity in the final proposals. This confrontational issue specification was also due to key personalities involved in this process, mainly energy Commissioner de Palacio and Director-General Lamoureux, and a formally strengthened DG TREN after nuclear responsibilities had been concentrated in DG TREN. The nuclear package was put on the agenda in a confrontational rather than entrepreneurial way. The Commission was very confident of its approach on the basis of its interpretation of the ECJ ruling. There was also the 'obvious' need for Community safety standards and radioactive waste management programmes to keep the nuclear option open in order to meet energy security and climate policy objectives. But the absence of policy entrepreneurship within the Commission paved the way for opposing Member States to engage in issue re-definition and agenda re-structuring during issue expansion.

5.5 Issue expansion: issue re-definition and agenda re-structuring 2003-2008

Initial reactions to the nuclear package among Member States were mixed. Ireland and Austria were in favour of the nuclear package due to nuclear safety concerns in neighbouring countries (the reprocessing plant in Sellafield, UK, and the NPP in Temelin, Czech Republic, respectively). France was in support of the NP because it was interested in increasing public acceptance of nuclear energy. It also wanted to underline its support for high nuclear safety standards that might, in the long-term, be beneficial for the French nuclear industry if it led to streamlined licensing procedures within the EU. The UK was against competence shift to the Community level in the field of nuclear safety and feared that the radioactive waste proposal would cut across an ongoing national process on radioactive waste management (Interview 14). Germany did not want to jeopardise its nuclear phase-out plan by putting additional economic burdens on nuclear operators. Sweden and Finland shared fears about a weakening of

nuclear safety standards to a lowest common denominator; they also feared that they would be forced to import radioactive waste from other EU countries. Finland could not accept the “Waste Directive Proposal” as long as it was not guaranteed that it would not be forced to import radioactive waste from other countries (Interview 21). Independently of why Member States supported or opposed the NP, the key question here is how they managed to restructure the policy agenda.

While “a few” Member States were “broadly sympathetic” to the Commission’s approach, others raised questions about “the general assessment of the situation, appropriateness of measures proposed in the light of subsidiarity, adequacy of the legal basis, added value, compatibility with international and the institutional framework as well as technological soundness” (Council, 2003a: 2). In June 2003 the Council Secretariat noted that Member States were, in general, supportive of the nuclear package’s objectives and that certain Member States agreed to proceed to the examination of the draft proposals. However, some Member States asked for more information from the Commission on broader issues before entering the examination stage of the proposals. These more general concerns were divided into five areas: first, legal and principles issues; second, analysis of the nuclear safety situation; third, added value and effectiveness; fourth, scope, nature and practicalities of the proposed measures; finally, interplay with international framework (Council, 2003e). The “added value” of the nuclear package in the context of existing international regulatory frameworks is highlighted as a central issue. This was also due to the fact that, after the ECJ ruling, legal issues could no longer be deployed by opposing Member States (Interview 11), except for questioning the use of the Euratom Treaty as the basis for binding provisions related to decommissioning funds.

The European nuclear industry did not have a strong unified stance on the nuclear package (Interview 8). The industry was quite supportive of the “Waste Directive Proposal” except for the strict timetable, but had major difficulties in finding a united position on the “Safety Directive Proposal” and in particular on decommissioning funds (Interview 8). Foratom, representing the European nuclear industry in Brussels, cautiously welcomed the directive on waste management, but was sceptical about safety standards and decommissioning funds (Power in Europe, 2002). On the nuclear safety proposal Foratom considered the “excellent results” delivered by the regulations in

place, but acknowledged the “views of others” supporting common standards (Foratom, 2002a). It emphasised the ongoing exchange of best practice at the utility level, and stated that “the industry sees its actions as part of its long-term strategy towards supporting nuclear as a sustainable energy source” (Foratom, 2002a). Foratom supported the harmonisation of nuclear safety standards at the global level instead of common standards at the Community level, and called on the Commission to support IAEA’s work in this area to ensure “that the evolution of the applicable safety standards will remain governed only by sound technical considerations”. Moreover it emphasised the role of national regulatory authorities who would remain solely responsible for the inspection of nuclear installation. Foratom underlined the role of the IAEA, national regulatory authorities and the operators as having the prime responsibility for nuclear safety.

In relation to the package’s provisions on decommissioning funds, Foratom emphasised the need to allow Member States to consider the national context, although it shared the overall objective of ensuring availability of funds when needed for decommissioning purposes (Foratom, 2002b). As for the proposal on radioactive waste management, Foratom acknowledged the importance of gaining public support, but called for more flexibility for Member States and questioned the strict deadlines in the proposal (Foratom, 2002c).

Utilities were mainly opposed to the nuclear package due to the provisions on decommissioning funds, and the envisaged extra level of control over national regulators that might have reduced their powers due to established links with national regulators. However, the Commission’s objective to contribute to better public acceptance of nuclear energy was supported (Interview 10). In general the nuclear industry and utilities were not very visible at the EU level throughout the process, apart from their activities against decommissioning funds where they lobbied strongly at national and EU level (Interview 3, 4). This low visibility was also due to the fact that there was no clear and strong common position among the members of the respective EU lobbying organisations (Foratom and Eurelectric). It was mainly left to national energy companies to lobby their national governments.

Environmental NGOs saw the Commission's nuclear package mainly as a "green wash" of nuclear energy to prepare for the relaunch of nuclear energy in the EU (Interview 11). They were strongly opposed to the nuclear package, but did not play an important role in the policy process. Over time environmental NGOs lost interest in the nuclear package and became more involved in the Constitutional Treaty discussions and the role of Euratom in the future Constitutional Treaty. One representative argued that it was hard to maintain interest in the nuclear package throughout the NGO network because nothing was moving compared with the Treaty discussions.

After the Commission had tabled the nuclear package, the Council gradually established itself as the leading player in the policy process. Whilst the EU decision-making procedure results in a substantial transfer of responsibility from the Commission as "formal agenda-setter" to the Council after a proposal is published (see 3.3), this section shows why and how the Commission was marginalised during issue expansion. The Council itself was split on the nuclear package and could not therefore reach the required unanimity to change the Commission proposal. In a first reaction Member States agreed on the general objective to achieve a high level of nuclear safety, and on the need to find a solution to radioactive waste. However, they disagreed on how to achieve this objective. Building on the Commission's issue specification, Member States opposed to the nuclear package could redefine the issues and restructure the agenda by proposing alternative policies and processes. Since the policy process was based on Art. 31 of the Euratom Treaty, the decision-making procedure was formally qualified majority voting (QMV) in the Council with the EP in a consultative role though, as in most Council procedures Member States sought to obtain a consensus. National nuclear regulators with their expertise in this policy field played a key role in this process.

5.5.1 Policy entrepreneurs: agenda-structuring

In the Council the formation of an opposing group of Member States, including Sweden, Finland and the UK, in an ad hoc response to the Commission's proposals (Interview 14) strongly influenced the subsequent policy process. As soon as a blocking minority together with Germany was formed and alternative proposals tabled, the discussion within the WPAQ did not advance any further (Interview 14). Moreover non-

papers tabled by Sweden, Finland and the UK in September 2003 were important to build and sustain an opposing group of Member States (Interview 18).

The influence of the blocking minority was strengthened by the united stance between the respective national governments and their national nuclear regulators (Interview, 8, 15, 16, 18, 23). National regulators were mainly opposed to the proposal on nuclear safety because they feared the loss of their independence. In July 2003, a statement by WENRA underlined the regulators' opposition to the Commission's proposal on nuclear safety. WENRA's key arguments against the nuclear package with respect to nuclear safety was the "significance of the national responsibility for nuclear safety" (WENRA, 2003), and the importance of in-depth knowledge for an effective regulatory control that can only be provided by national regulators. According to WENRA national expertise was of particular importance given the different reactor designs and institutional frameworks in place.

Despite the opposition in the Council, Commission officials showed no sign of moving in order to reach a compromise but tried as hard as they could to push the dossier through the Council (Interview 14, 24). Even when it became clear during Council discussions that the nuclear package would not be adopted, the Commission refused to split the package. A split might have helped to eliminate controversial issues from the agenda and thus facilitate political agreement (Hennessy, 2007a). The Commission only agreed to split the package in May 2004 when it was too late. For one participant it seemed as if the Commission was working against the adoption of its own proposal (Interview 23).

The frustration of some national delegations was reflected in an official letter by British Prime Minister Blair and German Chancellor Schröder to Commission-President Prodi expressing their concerns about the nuclear package (Interview 25). Officials from the UK and Germany, which were both opposed to the nuclear package, had the impression that their concerns and arguments were not taken seriously by Commission officials. As a consequence they convinced their heads of government to intervene directly at the Commission's top level.

In addition, two non-papers⁵¹ tabled by Finland, Sweden and the UK were put forward as non-legally binding alternatives for the “Safety Directive Proposal” (Council, 2003b) and “Waste Directive Proposal” (Council, 2003c). These non-papers, supported by Germany (Interview 25), were tabled as an alternative to the Commission’s nuclear package. The aim of these non-papers was to highlight that there was a non-legally binding alternative to the Commission proposals and to point to serious matters of concern among opposing Member States. Thus Member States were able to demonstrate that they were not opposed to nuclear safety objectives as such (Interview 23, 24), but point to the way this should be achieved. These non-papers substantially restructured the policy process.

The Council Presidency used its agenda-shaping power (Tallberg, 2003) by accepting these alternative proposals as the basis for future discussions in the Council’s WPAQ (Council, 2003d). It structured the agenda differently and shifted the agenda away from the Commission’s initial proposals. The revised safety proposal omitted, for instance, reference to Art. 187 of the Euratom Treaty; this allows the Commission, within certain limits, to “collect any information and carry out any checks required for the performance of the tasks entrusted to it”. It also called for the creation of a Regulatory Authorities Committee that would strongly increase the influence of national regulators on the verification process, while the Commission would play more of a coordinating role.

In January 2004 this alternative route was further pursued when Finland, Germany, Sweden and the UK formally tabled a proposal for a Council Resolution on nuclear safety, arguing that “a non-legally binding, incentive driven and well defined harmonisation process, respecting the national responsibility for nuclear safety and taking into account already existing international co-operation, has the best possibility to achieve positive results from the safety point of view” (Council, 2004c: para. 13).

Subsequently no major progress could be reached on the revised proposals (Council, 2004d), although the nuclear package was a priority under the Irish Presidency. Five Member States (DE, UK, SW, FI and BE) opposed the two nuclear directive proposals

⁵¹ Non-papers constitute unofficial and informal documents tabled as input to ongoing policy discussions as opposed to official alternatives for legal adoption.

on waste and safety and wanted them to be downgraded into non-binding instruments. The Irish Presidency noted that “regarding the proposal on Safety, a very small number of delegations are still seeking clarifications on the scope of the proposed directive, the level of detail for the provisions on financial resources, or as regards provisions on the consultation of population” (Council, 2004a). At the same it noted that “a number of delegations” still preferred non-binding instruments to reach the common objective of a high level of safety standards.

The opponents’ position was supported by the EP’s reports on the nuclear package published in early 2004. The majority of suggested amendments to the safety proposal strongly supported the Council’s amendments (EP, 2004b). The EP expressed scepticism towards the Commission’s proposal, and supported the opposing Member States’ position (Interview 2, 7). The EP underlined Member States’ prime responsibility on nuclear safety and called for clear provisions on decommissioning funds in new legislation under the EC Treaty (Amendment 30). The resolution on the “Waste Directive Proposal” was generally more supportive of the Commission’s approach, the major difference being that the ambitious deadlines for national waste management programmes were omitted (EP, 2004a). The EP’s reports therefore did not strongly (waste) or not all (safety) ‘interlock’ (Jones and Clark, 1999) with the Commission’s agenda.

In June 2004, Council conclusions broadly rejected the proposals discussed. They referred to the international safety rules in place and strongly emphasised national competences in this policy field. The conclusions formalised an alternative discussion process within a new institutional venue led by the Council, putting national regulators in a central position. The Council conclusions acknowledged the work by other fora, such as the IAEA, NRWG, and WENRA, and decided “to return to this matter in a timely manner” (Council, 2004b: para. 9). It urged Member States, together with the Commission, to engage in “a wide ranging consultation process facilitating the choice of instrument(s), in the framework of the Euratom Treaty, that can contribute more effectively to achieving nuclear safety and the safe management of spent fuel and radioactive waste, without excluding any instrument and in line with the principles of Better law making” (Council, 2004b: 4).

The Council's WPAQ and WPNS were invited to review this process and the Commission was invited to report on, and assess, the outcomes of this process together with Member States. Austria, Italy and Luxembourg expressed their discontent on the agreed consultation process with rather vague objectives in an Annex, and instead invited the Commission to renew its initiative on binding common nuclear safety standards. The WPNS was asked to report back to the WPAQ by the end of 2006 (Council, 2005). The agreed consultation process was launched in the second half of 2004 and is analysed below (see 5.5.2).

In September 2004, the Commission proposed a revised nuclear package (CEC, 2004a), but these amended proposals were never discussed in the Council. Due to the strong resistance by some Member States, the Commission rejected the EP's amendment of an inclusion of new provisions to guarantee the availability of financial resources and their assignment to decommissioning. The issue of DF was 'organised out' of the nuclear package process. Shortly after the publication of the amended proposals the Commission published a first report on Member States' decommissioning funds in October 2004 (CEC, 2004b). With the publication of this report the Commission responded to the announcement made in the Commission statement that was published in parallel with the interinstitutional agreement when the second energy market liberalisation directive was adopted (see 5.3.1).

5.5.2 Institutional venue shopping (I): bottom-up meets top-down

By establishing the ad hoc WPNS, new issue definitions and new access structures were institutionalised. The Council-led consultation process was implemented under the auspices of the reactivated WPNS, originally established for the assessment of nuclear safety in candidate countries. It consisted mainly of representatives from national regulators and therefore had a technical focus. The idea behind WPNS was to start a consultation process that was as objective as possible, and credible among all Member States, by shifting the debate from the political to the technical level of experts (Interview 6). WPNS was however supervised by the WPAQ to ensure that the experts went in the right direction (Interview 24). Policy entrepreneurs resorted therefore to institutional venues of expertise; this move was also intended to depoliticise the discussion (Timmermans and Scholten, 2006).

WPNS treated the same elements as proposed by the Commission in the nuclear package and kept the issues on the Council agenda (Interview 1, 21, 23). However the issues were organised differently (Interview 23), and, as WPNS discussed according to its own terms of references, the WPNS consultation process was regarded by several interviewees as completely separate from the nuclear package process (Interview 14, 18, 23). The main focus was on the added value of Community legislation, and the WPNS consultation process would not necessarily develop a legislative proposal (Interview 14) – the key difference to the nuclear package. The main aim of the WPNS consultation process was to get an inventory of existing regulations at national, EU and international level, on the basis of which the need for additional EU rules could be identified (Interview 24, 25). This was a process that had been expected to be accomplished by the Commission before the publication of the nuclear package (Interview 6, 17, 25). The final WPNS report was adopted by the WPAQ in December 2006, and broadly confirmed some Member States' scepticism towards new Community legislation as well as towards existing international standards (Council, 2006g).

As a result of the WPNS consultation, the Commission was organised out of the policy process (Interview 17) and WENRA was placed into a key position, although officially WENRA could not play too important a role since non-nuclear Member States would have felt excluded from the process (Interview 25). Nevertheless WENRA's success as policy entrepreneur was supported and to a certain extent formalised by the WPNS consultation process (Interview 14). There was a strong overlap between WENRA and WPNS membership (Interview 9, 10, 13, 18). As a result of the Council-led WPNS consultation process, WENRA's harmonisation agenda and the discussion initiated by the nuclear package were increasingly synchronised with respect to timing and content (Sauter, 2009).

A crucial factor in WENRA's success was that it had initiated a parallel harmonisation process of nuclear safety standards and that it kept this process ongoing despite the Commission's nuclear package. In 1999 WENRA launched a harmonisation process of national safety standards (or "Reference Levels" in WENRA's term). This process referred to existing NPPs only, and focused on regulators' requirements of licensees and not on regulatory regimes. It covered five main safety areas: safety management, design, operation, safety verification, and emergency preparedness. A first report on the

results of this process was published in 2005 for comments, followed by a revised final report in January 2007 to serve as the basis for national action plans for harmonisation by 2010. On this basis WENRA members committed themselves to improve and harmonise their national regulatory regimes by 2010 (Woodhouse, 2007).

This harmonisation process was in parallel to the Commission's proposals (Interview 8, 16, 18, 20). When the Commission announced in 2001 to WENRA that it would aim for legislation in the field of nuclear safety, WENRA rejected a role for the Commission in shaping the agenda of its ongoing harmonisation process (Interview 18). WENRA's process was continued as a parallel process after the nuclear package had been published to show that the Commission's proposals could not be taken seriously due to their poor quality (Interview 16). By following this route WENRA showed that a bottom-up approach that involved national regulators in formulating common safety standards could work. It therefore offered a clear alternative to the Commission's approach (Interview 23).

WENRA's intention was to provide a broadly acceptable 'content' for any new Community legislation. In 2007, WENRA chairman Dabrova argued that "one of the major tasks for Wenra will be to provide the results of the bottom-up approach when it's time to go top-down" (MacLachlan, 2007b). WENRA initially opposed the legislation but changed its position over time and accepted legislation (Interview 8).

Besides the broad support by national regulators, the gradual involvement by the nuclear industry in the WENRA harmonisation process helped the process to become increasingly accepted. In 2005, the nuclear industry completed the WENRA process by establishing the European Nuclear Installations Safety Standards Initiative (ENISS). ENISS fed the nuclear industry's view into the process and welcomed WENRA's harmonisation process (Foratom, 2006). The industry's involvement was considered as very important to ensure that the agreed safety standards (RLs) were operational (Interview 8). This was followed by the Commission with great interest as a potential basis for future legislation (Interview 2, 20).

The WPNS consultation process was considered by many Member States' representatives as a useful learning process, whereas the Commission saw it mainly as a

delaying tactic bearing in mind that the Prodi Commission's mandate ran out in autumn 2004. Although the Commission could still table proposals, it was clear that for the following 2-3 years no new legally binding proposals would succeed (Interview 6). One Commission official who became involved in this process at a later stage considered the WPNS consultation process to be very useful. This was because it allowed for an exchange of views on the basis of a rather technical discussion, and showed why the nuclear package was necessary (Interview 20).

To summarise, the WPNS consultation process ensured that the issues put forward by the nuclear package were kept on the Council's agenda, although the debate was structured differently. The Commission was marginalised, whereas nuclear regulators gained an important position in this consultation process, and ensured that the WPNS consultation process and the WENRA harmonisation process were increasingly synchronised in terms of their timing and content. The struggle in influencing the agenda was continued in the follow-up consultation process. Despite regular meetings between WENRA and non-nuclear Member States, non-nuclear Member States always made it clear that there must be a new consultation process with full involvement of non-nuclear Member States if common standards were to be adopted (Interview 9).

5.5.3 Institutional venue shopping (II): technical and political venues

As requested in the Council conclusions 2004, and in order to broaden the consultation beyond WENRA, a follow-up consultation process was initiated in early 2007 (Council, 2006c; b). In a WPAQ meeting in January of that year, the Commission underlined that it was still keen to adopt concrete measures and instruments under Euratom, whereas Member States emphasised the need to establish the added value of any new measures (Council, 2007d). Both parties tried to push their policy objectives through by the establishment of institutional venues supportive to their objectives.

Between 2004, when the Council launched a new series of consultations as the follow-up to the nuclear package, and 2007, when a new stage of this consultation process was launched, the general context and the image of nuclear energy changed quite significantly at the national and EU level. In the late 1990s and the early 2000s, the prospects for nuclear energy in the EU were not very promising after the German red-green coalition government had agreed a nuclear phase-out law (in consensus with the

German electricity industry) by around 2025⁵². This was an important symbolic decision by a major industrialised country and was followed by other EU Member States, such as Belgium which announced in mid-2004 that it would phase out nuclear power by 2030.

In 2003 the UK government concluded that it would not propose new nuclear build and considered it as an “unattractive option” (DTI, 2003: 61) under current economics of nuclear power. However, a couple of years later, and in response to changes in the external energy environment, the then prime minister Blair announced that nuclear power was “back on the agenda with a vengeance” (MacKerron, 2009). In 2004 Finland notified the Commission of its plans to build a new NPP at Olkiluoto as required under Art. 41 of the Euratom Treaty (CEC, 2006c). Olkiluoto was the first new NPP to be built in the EU for more than a decade. This was followed by an announcement by France to build a new NPP in Flamanville which was officially approved by the French Prime Minister in 2007⁵³.

While the actual significance of these decisions with respect to a ‘nuclear renaissance’ can be questioned (Mez and Schneider, 2008), these announcements in favour of nuclear energy influenced the policy debate at the EU level. In the final version of the fifth PINC published in October 2007, the Commission referred to the decisions in Finland and France to construct new reactors and to the reopened debate on the extension of the operating lifetime, the replacement of existing plants, or the construction of new installations in a number of new Member States (CEC, 2007f: 4). The Commission argued that “nuclear energy generation has a role to play” (CEC, 2007f: 5) to meet the main energy policy priorities outlined in the 2006 Green Paper on security of supply, competitiveness and sustainability. Following the 1990 and early 2000s – when the prospects for nuclear energy in the EU had appeared unpromising – these developments were used to indicate the need to address issues such as nuclear safety, decommissioning and radioactive waste management.

⁵² Gesetz zur geordneten Beendigung der Kernenergienutzung zur gewerblichen Erzeugung von Elektrizität of 22 April 2002, Bundesgesetzblatt, 2002, Part I, No. 26, 26/04/2002.

⁵³ Décret n°2007-534 du 10 avril 2007 autorisant la création de l'installation nucléaire de base dénommée Flamanville 3, comportant un réacteur nucléaire de type EPR, sur le site de Flamanville (Manche)

A swing in the political mood towards nuclear energy at the EU level could also be noticed in the EP's position on nuclear energy following the 2004 enlargement. Traditionally the EP "has been less sympathetic to nuclear power than the Member State governments" (Cameron, 2007b: 76). In recent years several initiatives by MEPs called for more action in the field of nuclear energy. There is now a cross-party majority in support of nuclear energy – with the exception of the Greens (Interview 19) and some MEPs from other political groups. The general pro nuclear stance was underlined by the EP's resolution "Assessing Euratom" (EP, 2007a). The resolution regretted the absence of harmonised standards as proposed in the nuclear package (para. 31), and encouraged "the Commission to draw up at regular intervals [...] really forward-looking PINCs for nuclear production and investment targets". It also "notes in this connection that the use of all other energy sources is also a matter for national competence but that targets (sometimes even binding targets) are nevertheless set at Community level, as is the case with renewable" (para. 50). The EP called also for a revision of decision-making procedures related to nuclear energy issues with full involvement of the EP.

This changing political context made the Commission more willing to put the nuclear dossier back on the agenda after it had been marginalised by the Council-led consultation processes. Based on the technical consensus reached within the scope of the WENRA process, and building on the discussion process that started with the nuclear package, the Commission called for a restart of the legislative debate.

In its PINC published in January 2007⁵⁴ the Commission suggested a way forward in order to finalise and improve the nuclear package, including (CEC, 2007f: 22):

- recognition of common nuclear safety reference levels for implementation in the EU, building on the extensive expertise of national nuclear safety authorities;
- setting up "a High Level Group on Nuclear Safety and Security with the mandate of progressively developing common understanding and, eventually, additional European rules on nuclear security and safety";
- national plans for radioactive waste management;

⁵⁴ As required under Art. 40 of the Euratom Treaty the Commission had to obtain the opinion of the European Economic and Social Committee before its publication in October 2007, see COM(2007)565final.

- simplification and harmonisation of licensing procedures, “based on closer coordination between national regulatory authorities, aiming at maintaining the highest safety standards”.

The PINC concluded that “the Commission considers it a priority that the Community adopt a legal framework on nuclear safety” (CEC, 2007f: 23). The Commission used the results of two Special Eurobarometers to support its case for legislative action (CEC, 2005b; 2007d). Before the 2007 spring summit a special survey on nuclear safety concluded that “there is widespread support for the EU as a mediator of information exchange between European nuclear safety experts and as a guardian of harmonised nuclear safety legislation” (CEC, 2007d: 58), although most respondents asserted that Member States should be able to adopt their own legislation. From the Commission’s viewpoint common safety principles, whose implementation would be independently verified by the Commission alongside national radioactive waste management programmes, remained important steps to increase public acceptance of nuclear energy within the EU.

The German Council Presidency in 2007 supported the establishment of the High Level Group (HLG). Yet the expected outcomes were still different from those of the Commission. Member States such as Germany, who were opposed to a competence shift to the Community level in the area of nuclear safety, wanted to ensure that the follow-up process was not necessarily about new legislation (Interview 15).

In addition to the HLG a second institutional venue was established in 2007 in response to the conclusions of the spring summit 2007: the European Nuclear Energy Forum (ENEF). The European Council called for a broad discussion “among all relevant stakeholders on the opportunities and risks of nuclear energy” (Council, 2007a: 23). This initiative was mainly supported by new Member States (Interview 20). The idea was taken forward by the Prime Ministers from the Czech Republic and the Republic of Slovakia who agreed to jointly host ENEF. The aim was to provide recommendations and specialist advice to the European Commission and the national governments. The Commission actively pushed for the establishment of the ENEF and it met for the first time in November 2007. The significance allocated to ENEF was underlined by

Commission President Barroso's welcome address to the first ENEF meeting (Barroso, 2007).

Thus, supported by the previously noted changed context and image of nuclear energy, the Commission tried to use process legislation to establish a more favourable institutional framework for its policy objectives in the field of nuclear energy. Initially the Commission investigated various ideas about the institutional framework of the follow-up consultation process. In January 2007 the Commission played with the idea that the HLG would not only include representatives from national nuclear safety authorities, but also "various actors from both public and private sectors, as well as from non-nuclear member countries" (MacLachlan, 2007a). By contrast, others saw the HLG as "a mirror group" that would be the institutional counterpart of WENRA (MacLachlan, 2007a). It was finally decided to create two different groups: on the one hand, the HLG on nuclear safety and radioactive waste management, composed of senior expert representatives from Member States, and, on the other, ENEF that would represent all relevant stakeholders for a broad discussion of nuclear energy including political, social and economic aspects.

The agreement on the establishment of both advisory groups was, however, followed by a struggle about the scope and task of these groups that exemplified the influential role that institutional venues can take in EU energy policy-making. All policy (or political) entrepreneurs tried to design and use HLG and ENEF for their policy objectives. The Commission's objective was to use the HLG as a forum to formulate new Community legislation building on the nuclear package. This objective was clearly stated in the 2007 PINC, and the Commission decision establishing the HLG (CEC, 2007a). By contrast, the Council saw the HLG as a Council-led group that was established by the Commission only on invitation by the Council (Interview 18). From the Council perspective it was simply a practical solution in terms of logistics to have it operated and established by the Commission (Interview 6). The Council considered the HLG process as a continuation of the WPNS consultation process that would not necessarily lead to new Community legislation (Council, 2007b). The Commission wanted to ensure that the chairperson was sympathetic to the Commission's approach, while some Member States wanted a person closer to their own position (Stellfox, 2007b). Both

perspectives were reflected in the Council conclusions and Commission decision respectively (see Table 3).

Table 3: HLG as an example of “venue shopping”

	Council conclusions (8784/07)	EC decision (2007/530/Euratom)	HLG Rules of Procedure (HLG_p(2008-02)_8.Final)
<i>Task / Purpose</i>	“furthering a common approach” a list of possible actions suggested by the Council (“by means of coordination”, “building on the WENRA process”)	“shall advise and assist the Commission in progressively developing common understanding and eventually additional European rules” (Art. 2)	“shall work to develop a common understanding and, if appropriate, suggest common approaches” and “shall facilitate consultation, coordination and cooperation of national regulatory authorities in the EU” (Art. 1)
<i>Composition</i>	Senior representatives from safety authorities, regulatory or administrative bodies and EC representatives	National representatives with competence in the relevant fields and high level EC representative (Art. 3)	Each MS shall designate two senior representatives competent in the relevant areas and high level EC representatives
<i>Reporting</i>	To the Council and EP the latest of two years of its establishment, then progress report every three years	To the EC at least two years after entry into force of EC Decision and thereafter every two years. EC to transmit reports to EP and Council, “where appropriate with comments” (Art. 6)	To the Council and EP; first report by 17 July 2009.
<i>Work programme</i>	To be established by the end of 2007 on the basis of list of actions structured in three areas: <ul style="list-style-type: none"> • Safety of nuclear installations; • Safety of the management of spent fuel and radioactive waste; • Financing of the decommissioning of nuclear installations and safe management of spent fuel and radioactive waste 	<ul style="list-style-type: none"> • Safety of nuclear installations • Safety of the management of spent fuel and radioactive waste 	Work programme (May 2008) – three working groups: <ul style="list-style-type: none"> • Improving Nuclear Safety arrangements (CNS, national arrangements for regulating nuclear safety, the pros and cons of EC Directives or other instruments covering Nuclear Safety) • Improving Radioactive Waste Management, Spent Fuel and Decommissioning arrangements • Improving Transparency arrangements
<i>Follow-up</i>	Council should review HLG’s achievements and decide on further action as appropriate		

Source: Own elaboration

At the first meeting of the HLG in October 2007, Member States such as DE, SE and UK questioned Art. 2 of the Commission decision on HLG, which stated that the HLG “at its own initiative or at the request of the Commission, shall advise and assist the Commission in progressively developing common understanding and eventually additional European rules (...)”. They argued that the HLG should base its work programme more on the Council conclusions of May 2007, i.e. to select and address actions, listed in these conclusions, which would be of added value in identifying common approaches, without duplicating the work already being carried out on national and international level. Germany’s insistence on the Council conclusions as a basis for the HLG’s work was further underlined by a note to the HLG (HLG, 2007). Within the HLG many members shared a certain level of mistrust against the Commission, and wanted to ensure that any Commission action would not be against the interest of Member States (Interview 17). Given the lack of expertise within the Commission, some HLG members preferred that the HLG would draft any new proposal on harmonisation to ensure it went in the right direction (Interview 16).

The Rules of Procedures adopted by the HLG showed that its own understanding was more in line with the Council than the Commission (HLG, 2008c; a). This was also reflected in a comment by Massimo Garriba, head of the Commission’s Euratom Coordination & International Relations unit, who acknowledged that “the EC [the Commission] was no longer trying to lead the drive for common EU nuclear safety rules, but would follow what the council-appointed HLG does” (Stellfox, 2007a: 11).

HLG’s role was also contested within the HLG. There was strong disagreement on the French representative’s suggestion that the HLG should come up with an agreement on a new nuclear “Safety Directive Proposal”. Drabova, the Czech WENRA chair, argued that the Commission might underestimate regulators’ concern about the status of their nuclear programmes, and that new Member States would not accept any interference in national regulators’ authority. By contrast, Jukka Laaksonen, DG of the Finish regulator STUK, argued that HLG should work on a directive on common design criteria for new nuclear power plants in Europe. However, it was feared that nuclear opponents would call for these standards to be also applied to existing power plants.

The interest in new nuclear power plants was a central agenda change as compared to the initial nuclear package that only dealt with existing nuclear plants. Minutes of the third HLG meeting in April 2008 indicate that a majority – with the exception of the UK and Germany – was in favour of working towards a legal Community framework for nuclear safety (HLG, 2008b). As for the timetable of the HLG's work the work programme published in May 2008 envisaged that a first report for the Council and the EP should be finished by spring 2009 (HLG, 2008d).

Compared with the HLG that was supposed to be a technical group of experts despite its political dimension, ENEF's objective was to create a stakeholder forum similar to other fora for various energy sources established by DG TREN⁵⁵. As indicated above, the Commission played with various ideas on how to establish a broad stakeholder forum to discuss the future of nuclear energy in the EU, although this idea was never included in any of the Commission's official publications at the time. Both the PINC (CEC, 2007f) and the Commission's communication "An Energy Policy for Europe" (CEC, 2007b) referred only to the establishment of the HLG.

Three Working Groups were established at the first ENEF meeting: 1) Opportunities of nuclear energy; 2) Risks of nuclear energy; and 3) Information and transparency. The second working group was most relevant to the follow-up process of the nuclear package; this was because among its main priorities was the support of a greater harmonisation of safety requirements at the EU level for nuclear installations in the EU, particularly through the HLG (ENEf, 2007).

ENEf was interpreted as resulting from the Commission's frustration with the NP process – not only for the rejection of the nuclear package, but also because it was not possible to openly discuss the role of nuclear energy in the Council because of the strong opinions on nuclear energy among some Member States such as Austria and Ireland. ENEf was therefore seen as an instrument by the Commission to push the Council forward on this issue (Interview 24). The idea was to build up sufficient support by relevant stakeholders to legitimise a new legislative proposal that would make it

⁵⁵ The Florence Forum deals with the internal electricity market, the Madrid Forum with the internal gas market, the Amsterdam Forum with sustainable energy with a particular focus on renewable energy and energy efficiency. While the Florence and Madrid Fora are mainly concerned with market regulation, ENEf has a broader scope dealing with the pros and cons of nuclear energy.

difficult for the Council to reject such a proposal (Interview 20). Observers suggested that ENEF was not an open process, but strongly controlled by the Commission (Interview 9, 23). Although broad stakeholder support could constitute a supporting coalition that the Commission did not have in the past, Commission representatives were well aware that this could backfire if it was seen as a promotional tool for nuclear energy (Interview 5).

ENEF's outputs showed strong support for the Commission's policy objectives. The conclusions of the second ENEF-meeting were strongly supportive of the adoption of EU legislation on nuclear safety and waste management, based on common fundamental safety principles for nuclear installations. With such a legal framework, it was argued, Europe could become "a real model also for possible nuclear newcomers" (ENEF, 2008). In view of future EU initiatives on safety of nuclear installations, ENEF emphasised the need to harmonise EU national licensing requirements. Thus new build attracted increasing attention in the debate. Based on a SWOT analysis, the working group considered an "EU Directive on common Fundamental Safety Principles for Nuclear Installations" as an appropriate regulatory instrument. With respect to WENRA's Reference Levels, further discussions were considered necessary to assess if a Directive or a Recommendation would be the most appropriate instrument (ENEF Subgroup Harmonisation, 2008).

The instrumental relationship between the nuclear industry, WENRA and HLG, and the role of ENEF in pushing the HLG to consider regulatory issues not only related to existing NPPs but to include new build, is reflected in the following quote (ENEF Subgroup Harmonisation, 2008):

"In the field of nuclear safety the existing WENRA Reactor Safety Reference Levels are already a sound basis for the new build of nuclear power plants. But for the design of Generation III NPPs there are requirements not covered by the current design safety issues. Therefore those Reactor Safety Reference Levels considering typical design features have to be further developed. ENEF encourages WENRA via the HLG to work in that direction based on what has already been done in this area. WENRA should apply a similar process to what

has been done for existing reactors and building a good interaction with the industry.”

This process resulted in the publication of a new proposal by the Commission in November 2008; setting up a Community framework on Nuclear Safety that aimed at restarting the process, establishing an EU framework on nuclear safety proposed as part of the nuclear package. In the second paragraph of the explanatory memorandum to the new proposal, the Commission argues (CEC, 2008c: 2):

“The renewed interest in nuclear power expressed by a number of Member States, with the perspective of numerous life extensions and construction of new plants, makes the timing of this revised proposal particularly appropriate.”

In a sign of policy learning among Commission officials, the Commission recognised the role of established policy entrepreneurs. The Commission’s legislative proposal built on WENRA’s technical work, recognised the principle of strong and independent regulators, and envisaged the enshrining of main international instruments in Community legislation. The IAEA’s CNS was supplemented by additional safety requirements for new NPPs “on the basis of the safety levels developed by WENRA and in close collaboration with the [...] HLG”.

Energy supply security and limitation of CO₂ emissions were identified as key reasons for the “revival phase” (CEC, 2008c: 3) of nuclear energy in the EU and globally. The Commission’s perspective was still that a Community framework for nuclear safety would add value to the national approaches, and ultimately result in “improved public confidence in the EU decision-making process on nuclear safety matters and bring legal certainty” (*ibid.*).

The explanatory memorandum to the legislative proposal referred explicitly to the ECJ ruling, C-29/99, to underline the proposal’s consistency with Community policies and objectives. Both institutional venues created during issue expansion were relevant in the new proposal and illustrated the significance of process legislation. The proposal referred to ENEF’s conclusions and their strong support for the adoption of EU legislation on nuclear safety. Moreover, a key role is assigned to the HLG in

“supporting the definition of instruments to maintain and further improve nuclear safety throughout the Community” (*ibid.*: 7); the HLG “will become the focal point for cooperation between the regulatory bodies charged with the safety of nuclear installations in the Member States and will contribute to the development of the EU nuclear safety framework” (*ibid.*: 2).

The new proposal dealt with nuclear safety only and replaced the directive on nuclear safety proposed in 2004, although in 2004 agreement on the radioactive waste management directive seemed more likely. Key provisions of the new proposal included:

- prime responsibility for the safety of nuclear installations, throughout their lifetime, rests with the holder of the license under the control of the regulatory body (Art. 3);
- Member States to establish and maintain a legislative and regulatory framework for nuclear safety (Art. 3);
- effective independence of the regulatory body provided with adequate authority, competence and financial and human resources to fulfil its responsibilities and duties (Art. 4);
- regulatory infrastructure, the regulatory body and the national regulatory structure will be subject to periodic international peer reviews (Art. 4);
- Member States are obliged to respect the IAEA safety fundamentals including the CNS (Art. 6);
- Member States are encouraged to develop additional safety requirements for new NPPs in line with WENRA’s work and in close collaboration with the HLG (Art. 6);
- the regulatory body shall carry out nuclear safety assessments (Art. 8);
- Member States shall report to the Commission on the implementation of the directive three years after the entry into force of the Directive and then every three years (Art. 11).

Besides new provisions on the simplification and harmonisation of licensing procedures for new NPPs, the 2008 proposal was much more restrictive with respect to any shift of competences to the Community level, and respected national responsibilities for nuclear safety when compared to the January 2003 version of the “Safety Directive Proposal”

(see 5.4). The 2008 proposal did not refer to common safety standards or principles, but referred to the national legislative and regulatory framework and to the IAEA safety fundamentals. Moreover it did not envisage the establishment of a verification system by the Commission, ensuring that national safety authorities comply with the agreed nuclear safety principles where the verification would have carried out by experts from another Member State. By contrast, the 2003 proposal envisaged that the Commission would be responsible for a verification process on the basis of a peer-review process.

The publication of the new Commission proposal cut across the HLG's work programme that had foreseen an HLG report to the Council and the EP by spring 2009, which should have served as the basis for any new Commission initiative. Instead the new Commission proposal aimed at clarifying the HLG's task and scope.

5.5.4 Summary: the role of alternatives

During issue expansion the Council used its powers of agenda-shaping (Tallberg, 2003) to restructure the agenda. The creation of new institutional venues granted formal access to new actors. The WPNS consultation as an alternative route marginalised the Commission's influence in the process, and put national regulators into a key position building on WENRA's parallel harmonisation approach. This bottom-up process offered an alternative to the Commission's top-down approach. Both process were increasingly synchronised in terms of their objectives and timeline.

Over time the Commission seemed to acknowledge the role of institutional venues and stakeholder involvement in the policy process. The Commission's support for the establishment of an advisory group for the development of new legislative proposals in the field of nuclear safety (HLG), and a broader stakeholder forum to discuss the future of nuclear energy in the EU (ENEF), constituted a significant change in the Commission's approach compared to the policy initiation stage, when existing advisory groups had been abolished or excluded from the drafting process. Instead of excluding and marginalising outside actors, it signalled a more transparent and open (re-)drafting process. This might have been the result of a learning process within the Commission that was also facilitated by the fluctuation of key personnel within DG TREN.

Both the Commission and the Member States tried to use process legislation in relation to HLG and ENEF to achieve their respective policy objectives (binding legislation vs. voluntary approaches/coordination). At the same time there was an important change in the nuclear safety agenda due to a changing policy context: it was no longer focused on existing power plants, as in the nuclear package, but included provisions on new nuclear power plants and licensing issues. In parallel, after the spring summit 2007, there was a general expansion of the nuclear dossier from the more technical level ('low politics') to a political level ('high politics'); this was reflected in the participation of Commission President Barroso and Prime Ministers from several Member States at the inauguration of ENEF. The new Commission proposal from November 2008 cut across HLG's agenda and timetable, and aimed at realigning HLG's work with the Commission's policy objectives, while integrating WENRA's bottom-up processes.

5.6 Chapter conclusions

Why did the Commission not succeed in introducing important changes in the field of EU nuclear energy policy as intended by its nuclear package published in 2002/2003 and revised in 2004? Drawing upon the agenda-setting framework elaborated in Chapter 3, it was argued that the Commission did not act sufficiently as a policy and political entrepreneur during policy initiation and issue specification, both with respect to content (issue definition) and procedure (institutional venues). These 'shortcomings' could be exploited by other policy entrepreneurs opposed to the nuclear package and thus prevented political agreement in the Council. From an agenda-setting perspective the chapter distinguished between three steps in this process: policy initiation, issue specification and issue expansion.

Policy initiation of the nuclear package was a mixture of low and high politics processes. At the level of high politics, e.g. European Council summits, the issue of nuclear safety was brought on the agenda in the context of the enlargement process. Nuclear safety was recognised as an integral part of the enlargement process. A split between Member States was, however, already apparent at the time: some Member States wanted the Commission to be responsible for the dossier, whereas others were keen to emphasise that nuclear safety was not a Community but a national responsibility. As a consequence there was no political momentum visible at the level of high politics that could have helped the Commission as formal agenda-setter.

From the Commission's viewpoint the EU enlargement process, supported by the ECJ ruling, constituted a window of opportunity to propose the nuclear package. A Community framework on nuclear safety, decommissioning funds and radioactive waste management was considered as fundamental to increase public acceptance of nuclear energy and thus to keep the nuclear option open in the EU. Against this background the Commission chose several problem definitions to justify the nuclear package. This raised doubts about the actual objective of the proposals and how the proposal would specifically address the identified problems. While the inclusion of provisions for decommissioning funds, as required by the EP, helped to prevent a separate co-decision procedure under the EC Treaty with full involvement of the EP, it increased opposition to the safety proposal within the Council and industry. Although the broad problem definition helped to put the issue on the agenda, it did not help in the adoption of the intended policy (Dery, 2000).

In addition (and linked to the lack of clarity concerning the content of the nuclear package), the Commission did not seek to build coalitions with key stakeholders during policy initiation and issue specification. Such coalitions could have helped to develop problem definitions and policy proposals backed by strong majorities. Instead the Commission excluded existing institutional venues such as the advisory groups NRWG and ACPM, which were eventually discontinued. Thus the Commission did not use relevant expertise from national regulators that could have strengthened its policy proposals, and could have contributed to higher acceptability among stakeholders.

Although this would have entailed substantial changes to the proposals put forward by the Commission, it might have helped to reach agreement on a first legislative step in this area. Moreover, at the political level there were scarcely any attempts to organise a supporting majority. Member States were taken by surprise when the nuclear package was published which affected issue expansion in a negative way. This confrontational issue specification was due to key Commission officials and a formally powerful DG TREN after nuclear responsibilities had been concentrated in DG TREN. Policy initiation by the Commission was therefore not built on "multi-directed consensus-building" (Pallis, 2006).

Against this background, opponents of the nuclear package could shift the agenda's priorities in the Council. Supported by some Member States (e.g. through non-papers), Council Presidencies' used their power of agenda-shaping (Tallberg, 2003) to structure the agenda by establishing a new institutional venue and thus granting access to new actors. The ad hoc WPNS consultation process did not investigate legally binding Community nuclear safety standards, but reviewed existing frameworks in order to assess if there was a need for a Community framework. It marginalised the Commission's influence in the process, and put national regulators into a key position as reflected in Council reports and the insistence of non-nuclear Member States to launch a second consultation process that should not be dominated by WENRA.

The Council-led consultation process therefore built on national regulators' recognised expertise as incorporated in WENRA's parallel harmonisation process. This bottom-up process showed nuclear regulators' ability to make progress on harmonised safety standards on the basis of a voluntary approach that offered an alternative to the Commission's top-down process. As a result of the Council's agenda structuring, the process was delayed by several years if compared to the Commission's initial timeline; the follow-up process to the nuclear package, and the WENRA process were increasingly synchronised in terms of its objectives (or 'issue definitions') and timeline.

The significance of institutional venues was also emphasised by the establishment of the HLG and ENEF. After the Council-led consultation process the Commission continued to pursue its objective of a legally binding Community framework. For this purpose it sought to use HLG as a new institutional venue to include national regulators in a new legislative drafting process. This was, however, prevented by the Council. At the same time the Commission tried to pursue its policy objective within the framework of ENEF, a stakeholder forum. This indicates policy learning within the Commission in the way it sought to engage with key stakeholders. ENEF sought to achieve a consensus among key actors to legitimise a new proposal that would then no longer be opposed by Member States. The procedural dimension was further underlined by the Commission's 2008 nuclear safety proposal that commits the HLG to elaborate a legally binding framework. Process legislation served therefore informational and legitimacy aims (Cram, 1993).

Contextual factors had an important influence at the policy initiation (EU enlargement) stage and during issue expansion. Decisions to build new nuclear reactors, and political discussions on the lifetime extension of existing nuclear reactors and nuclear new build in some Member States, helped to replace the image of the declining nuclear industry by the image of a nuclear renaissance. A policy image can be the “driving force in both stability and instability” (Baumgartner and Jones, 1993). This was visible in the 2008 proposal on nuclear safety: it was not limited to existing power plants as in the 2003-version, but included provision on new nuclear power plants and licensing issues. The new Commission proposal used the changed context and integrated existing institutional venues like WENRA and HLG while respecting national responsibilities.

The case study suggests that the Commission does not only need to act as policy entrepreneur in legally weak positions such as EU social policy (Wendon, 1998), but also in legally strong areas including Euratom proposals. Issue initiation, and in particular legislative initiation, took place predominantly at the level of low politics. The multiplicity of EU venues allowed several issue specifications, and offered opportunities for actors to steer proposals into institutional venues favourable to their policy objectives as predicted by earlier studies (Princen and Rhinard, 2006).

The agreement on the new nuclear safety proposal reached in the Environment Council on 25 June 2009 (Council, 2009a) could not be included in this analysis. It suggests, however, new agenda dynamics in this second agenda-setting cycle that started with the creation of ENEF and HLG.

6 Case study II: The EU RES Directive

6.1 Introduction

In December 2008 the Commission, the Council and the EP reached political agreement on a new directive for the promotion of renewable energy sources (RES) in the EU (Council, 2008b). A key achievement of the new EU RES directive was the introduction of an overall 20% EU RES target, broken down into binding national RES targets for 2020. The Commission's proposal for a new RES directive – part of the Commission's climate and energy package⁵⁶ – was published in January 2008, and agreement with the Council and EP was achieved, within less than 12 months, in December 2008. The political agreement was preceded by an EU agenda-setting process where low politics met high politics. Although the low politics process was an important preparatory stage of this agenda-setting process, it was high politics that enabled agreement to mandatory national RES targets after an unusually quick EU policy-making process.

This chapter provides an analysis of this policy process. Previous research on EU RES policy was predominantly interested in the best support systems and policy framework for RES, mostly from a comparative perspective (Reiche and Bechberger, 2004; Blok, 2006; Harmelink, Voogt et al., 2006). The following analysis is interested in the EU level decision-making process on RES policy. Previous studies that have addressed this policy process – or parts of it – provide interesting empirical insights that proved useful for this analysis, but they are limited to a certain period of this process (Nilsson, Nilsson et al., 2008; Toke, 2008), or focus on legal and economic aspects of the RES directive (Fouquet and Johansson, 2008; Johnston, Neuhoff et al., 2008). The analytical interest here is not in assessing the directive with respect to its potential in achieving an increase in RES investments in the EU, and thus to achieve the RES targets by 2020. The analysis aims to explain policy outputs of this policy process from an agenda-setting perspective.

The following analysis applies the agenda-setting framework elaborated in Section 3.3, and follows the key phases of the agenda-setting process as in the previous chapter.

⁵⁶ The Commission's "Climate action and renewable energy package" included, besides the RES directive proposal, a directive proposal revising EU ETS (COM(2008)16 final), a decision proposal on an effort-sharing agreement on GHG emission reductions from sources not covered under EU ETS (COM(2008)17 final), and a directive proposal on carbon capture and storage (COM(2008)18 final).

Policy initiation of the new RES directive started at the beginning of 2004 when a conference, organised by the Commission and the RES industry in cooperation with the German government, launched a political debate about EU RES targets beyond 2010. This initial phase culminated in March 2007 in the European Council's political agreement on a binding overall 20% EU RES target by 2020 as proposed by the Commission in an RES Road Map in January 2007 (Sauter and Grashof, 2007). The second phase – issue specification – started immediately after the spring summit 2007 with the drafting process of the new RES directive that was published in January 2008. The subsequent issue expansion under first reading procedure was characterised by political urgency to reach political agreement by December 2008. This objective was achieved under the French Council Presidency.⁵⁷ For a timeline of this policy process see Appendix B.

Due to the complexity of the RES policy process, the subsequent analysis focuses on two key issues to capture the dynamics of the agenda-setting process: RES target-setting and the attempt to introduce an EU-wide trading mechanism. Both issues were central to the policy debate since the discussions on the first RES directive in the late 1990s. From an agenda-setting perspective, it is of interest to analyse how these long-term discussions in a low politics context were influenced by increasing interest at the level of high politics, and thus may have affected issue entrance (Princen and Rhinard, 2006).

Other elements that were also important during the discussion of this directive, but could not be integrated into the analysis, included sustainability criteria for bioenergy, direct penalty mechanisms in the case of Member States' failure to meet interim RES targets, and priority grid access for RES. Sustainability criteria for bioenergy were organised out from the mainstream policy discussions in the Council into an ad hoc working group, and were perceived as disconnected from the RES directive discussion (Interview 35, 39).⁵⁸ Penalty mechanisms and priority grid access were not subject to long-term agenda dynamics.

⁵⁷ The stages of an issue career could have been applied differently, e.g. by considering the drafting of the RES Road Map as issue specification and the follow-up process as issue expansion. This was, however, ruled out as the RES Road Map did not constitute a legislative proposal but was a preparatory step towards a legislative proposal. The actual legislative proposal was elaborated after the spring summit 2007.

⁵⁸ Similarly the parallel policy process on the revision of environmental state aid led by DG COMP could not be discussed in this chapter. The Spring Council 2007 called "for an early review of the Community

The chapter is structured as follows. The following section provides a brief overview of Community policy towards RES prior to 2004 in so far as it is relevant for the subsequent analysis of the post-2004 RES policy process. The analysis is structured according to the stages of an issue career: policy initiation, issue specification, and issue expansion.

6.2 The role of renewable energy in Community energy policy

Renewable energy emerged on the EU energy policy agenda in the 1980s (see also 2.2). The increasing interest in RES was initially prompted by the desire to reduce the Community's reliance on imported fossil fuels, and later by the search for low carbon energy sources in the context of climate policy objectives. The emergence of transnational issues such as climate change, as well as the expansion of Community jurisdiction in the field of environmental policy and changes in institutional structures, contributed to new legislative initiatives in the late 1990s in EU RES policy (Matlárý, 1997).

6.2.1 Institutional basis

The SEA in 1986 ended the informal status of Community environmental policy. The new Art. 100a EEC introduced an explicit Community competence to regulate environmental matters in the context of internal market developments and Art. 130 r-t EEC provided an explicit basis for European environmental policy (Lenschow, 2005). While under the SEA QMV and the then newly introduced cooperation procedure with the EP was restricted to internal market issues, the Maastricht Treaty in 1993 established QMV and the co-decision procedure for most environmental policies and granted more influence to the EP in this policy field. This was an important procedural change and stimulus for European energy policy in general (Matlárý, 1997), and for EU RES policy in particular. However, before Arts. 100a and 130 r-t were used to introduce

guidelines on State aid for environmental protection and other relevant Community instruments which can provide incentives, with the aim of making them more supportive of the Community's energy and climate change objectives" after the guidelines in place were to expire by the end of 2007. This was an important parallel policy process after FiT support schemes were regularly attacked as illegal environmental state aid by opponents of this policy instrument (e.g. Lauber 2004). DG COMP had already launched a consultation process on the revision of the guidelines in 2005. Revised "Community guidelines on State aid for environmental protection" were published in April 2008: OJ C 82, 1.4.2008, pp. 1-33.

EU RES legislation in the late 1990s, EU RD&D programmes such as ALTENER reflected the increased political attention paid to RES at the EU level.

6.2.2 *ALTENER and the 1997 White Paper*

The 1990 energy policy objectives adopted in 1980 by the European Council included, for the first time, an unspecified objective to increase the share of renewable energy sources in the EU's energy mix (Council, 1980), mainly in response to energy security concerns in the 1970s. This general commitment to increase the share of RES in the EU energy supply mix was reiterated in a Council resolution in 1986 setting out 1995 energy policy objectives (Council, 1986). It was, however, only in the early 1990s when more concrete steps towards an EU RES policy were taken and EU R&D support programmes for RES were adopted. ALTENER I (Council, 1993), the EU renewables action programme for the promotion of renewable energy sources, supported the development of RES with a strong focus on R&D support, and constituted the first specific EU financial instrument for renewables promotion and was followed in 1998 by ALTENER II (CEC, 1998a).⁵⁹

Specified indicative RES targets were proposed for the first time in 1993 as part of the ALTENER programme:

- increase the share of RES of total energy demand from around 4% in 1991 to 8% in 2005;
- a threefold increase of renewable electricity (RES-E) generation (excluding large hydro);
- 5% market share of biofuels of total fuel consumption by motor vehicles by 2005.

As EU energy policy was institutionally very limited in the early 1990s, R&D programmes constituted one of the few tangible elements in the development of an EU energy policy. At the EU level R&D policies can therefore be regarded as an 'incubator' for EU RES policy. More significant steps forward towards an EU RES policy were the Commission's 1995 Energy White Paper (see 2.2) and the Green Paper on renewable energy in 1996 (CEC, 1996). The Green Paper suggested an RES target of 15% of the EU's primary energy mix by 2010. The EP called in its resolution on the Green Paper

⁵⁹ On the role of climate change policy objectives for ALTENER see (Collier, 1996).

for a 2010 target of at least 15% being broken down in sectoral and national targets for each member state (EP, 1997), and underlined its position as a strong supporter of an ambitious EU RES policy.

In November 1997, as a follow-up to the Green Paper, the Commission published a White Paper on renewables proposing a 12% EU RES target for 2010 (CEC, 1997b). It argued that:

“an indicative [RES] target is a good policy tool, giving a clear political signal and impetus to action. The strategy and action plan in this White Paper therefore, are directed towards the goal of achieving a 12% penetration of renewables in the Union by 2010 - an ambitious but realistic objective” (CEC, 1997b: 9-10).

Member States were expected to put forward individual objectives with details on how these could be achieved. The Community Strategy and Action Plan proposed in the White Paper included a variety of measures to be adopted at Community and national level across different policy sectors. New directive proposals were envisaged on “Fair Access for RES to the Electricity Market” and the “Promotion of Biofuels in the transport sector”.

The Energy Council welcomed the 2010-target as a “useful guideline”, and invited the Commission to consider proposals in order to remove barriers for the wider deployment of RES and in order to facilitate trade of green electricity (Council, 1998). By contrast, the EP reaffirmed a minimum 15% RES target with binding national undertakings on national overall goals and targets for each type of energy (EP, 1998). This policy process eventually resulted in two EU directives on RES-E and biofuels. These are briefly reviewed in the next sub-section. It focuses on the RES-E directive and the discussions on target-setting and support schemes as they constitute key issues in the agenda-setting process leading to the 2008 RES directive.

6.2.3 EC directives on the promotion of RES-E and biofuels

A proposal for an RES-E directive was published in May 2000 with indicative national targets and an overall EU-target for the share of RES in EU electricity gross

consumption of 22.1 % by 2010 (CEC, 2000c).⁶⁰ Environmental groups questioned the proposal's effectiveness in the absence of legally binding targets (Cordes, 2000). Similarly the EP called for mandatory national objectives (EP, 2000). Such calls were however opposed by most Member States in the Council (Council, 2000f). During the directive negotiations the Council sought to omit any references to mandatory targets – even in the case of failure to achieve the indicative targets and possible follow-up proposals by the Commission. Several Member States questioned even the indicative targets listed in the annex to the directive proposal (Council, 2000e).

In its final version as published in October 2001, the RES-E directive included national indicative targets, and a total 22% indicative EU15-target for the contribution of electricity produced from renewable energy sources to gross electricity consumption by 2010. A majority of Member States in the Council ensured that only indicative RES-E targets were set, and household waste for incineration was partly recognised as biomass (Lauber, 2005). However, supporters – mainly the Commission and Denmark – of a mandatory target succeeded in keeping a reference to mandatory targets in the final version of the directive. According to Art. 3(4) of the RES-E directive, mandatory targets can be brought forward by the Commission if the national indicative targets and the 12% overall target are not met.⁶¹ The Commission was therefore “extremely important as [an] agenda-setter on the issue of targets” (Rowlands, 2005: 970) in the preparation of the 2001 RES-E directive and succeeded in pushing national targets through despite them being more ambitious than what Member States initially supported.

With respect to the 2008 RES policy process, it is worth noting that in the RES-E directive 2001/77/EC guarantees of origin (GO) had already been introduced. The use of GO became a key issue in the discussion on the 2008 RES directive. In 2001 GO were introduced for disclosure purposes only in order to “enable producers of electricity from renewable energy sources to demonstrate that the electricity they sell is produced

⁶⁰ The proposal was based on Art. 95 (formerly Art. 100), a choice that was questioned by the Council's Legal Service. It argued that Art. 175 (formerly Art. 130) would be the appropriate legal basis for the directive because it would contribute predominantly to environmental objectives and not to market harmonisation (Council, 2000d). Collier (2002) also argues that GHG emission reductions, and thus environmental objectives, were the major rationale for the RES-E directive.

⁶¹ The Commission and Denmark insisted on setting individual and mandatory national targets if considered as necessary in the Commission's regular assessments of the directive (Council, 2000g).

from renewable energy sources within the meaning of this Directive” (Art. 5(3)). It was explicitly distinguished from tradable green certificates as noted in recital 11 of directive 2001/77/EC: “It is important to distinguish guarantees of origin clearly from exchangeable green certificates”. GOs should therefore not be misinterpreted as being originally intended as the basis for an EU-wide market-based certificate system. This distinction was challenged by Commission officials in the 2008 RES directive, but met fierce resistance among the RES industry and some Member States.

At the time it was considered as “too early to decide on a Community-wide framework regarding support schemes” due to limited experience with existing national support schemes. In April 1999 the Commission had already published a working paper that explored different options for RES support, argued in favour of market-based support mechanisms and considered an eventual transition from a Feed-in Tariff (FiT) to trading mechanisms as “inevitable” (CEC, 1999b: 17). The possibility of a Community framework was strongly related to an internal market frame as underlined in recital 16 of the directive: “It is, however necessary to adapt, after a sufficient transitional period, support schemes to the developing internal electricity market. [...] That proposal should contribute to the achievement of the national indicative targets, be compatible with the principles of the internal electricity market [...]” (*ibid.*). The internal market frame, and thus the evaluation on the basis of economic criteria, was however strongly contested by the EP which insisted on environmental criteria for such an assessment (Rowlands, 2005: 972).

Within the Commission DG COMP argued strongly in favour of market-based instruments that would conform to Community state aid rules. The initial Commission proposal published in May 2000 contained a provision that would have subjected support mechanisms for RES to state aid regulation and thus to DG COMP (Lauber, 2007). The ECJ ruling in the *PreussenElektra vs. Schleswag* case in March 2001 (ECJ, 2001a) was crucial in that it rejected the Commission’s argument that the German FiT (see also 6.2.4) constituted state aid and a quantitative restriction on electricity imports, and therefore a barrier for intra-Community trade (Oschmann, 2002). This ruling weakened the Commission’s position at a crucial state in the legislative process to the 2001/77/EC directive, and at the same time strengthened the EP’s position. In this context Lauber (2007) points to the importance of the ECJ ruling with respect to Art. 4

of the RES-E directive, which stated that state aid rules apply to RES support schemes. This would have made it possible for the Commission to intervene and cut national FiTs if it considered them as being in breach of Community state aid rules. The ECJ ruling prevented such an interpretation.

Targets and a Community framework for the support of RES-E were kept on the agenda by the reporting requirements of the RES-E 2001-directive. A first report required an assessment of the national progress towards the indicative targets by October 2004, with the possibility of proposing new mandatory targets if considered necessary on the basis of the Commission assessment (Art. 3(4)). The second report should “assess the success, including cost-effectiveness, of [...] [national] support systems [...] [and] if necessary, be accompanied by a proposal for a Community framework with regard to support schemes for electricity produced from renewable energy sources” (Art. 4(2)) (CEC, 2001b). A harmonisation proposal by the Commission, however, could not be tabled before 2005, and a transition time of seven years was foreseen before such a harmonisation would take effect. Although it was expected that any harmonisation proposal would build on market-based mechanisms, the reference to the cost-effectiveness of support schemes was an important amendment to the Commission’s initial draft (Lauber, 2007). Comparative studies of FiT and quota/certificate support schemes showed that the latter are not necessarily more cost-effective (see 6.2.4).

In addition to the promotion of RES-E, in November 2001 the Commission published two proposals on the promotion of biofuels as transport fuel: one directive set EU-wide binding biofuels targets of 2% by 2005 and 5.75% by 2010, another directive on excise duties allowed Member States to cut excise duties on biofuels (CEC, 2001a).

The biofuels directive proposal with binding targets was opposed by 12 out of 15 Member States emphasising its negative overall environmental performance. The adopted biofuels directive as published in May 2003 (CEC, 2003a) leaves it to Member States to set national indicative targets with two reference values: 2% by the end of 2005 and 5.75% by the end of 2010 (Art. 3(1)). However, as in the RES-E directive, supporters of a mandatory target achieved the inclusion of a provision, according to which the Commission could propose mandatory targets if the Commission’s assessment report shows that these targets are not met for unjustified reasons (Art. 4(2)).

In contrast to RES-E and biofuels no legislative proposal was published to cover renewable heating and cooling. Although the 1997 White Paper identified the strategic importance of renewable heating in order to achieve the 2010-target no specific policy proposals were envisaged. The first European Climate Change Programme (ECCP) report⁶², published in June 2001, indicated the need for an initiative on the promotion of heat production from RES (RES-H). The necessity for additional RES-H initiatives was reaffirmed in the second ECCP in November 2003 and resulted in Commission sponsored study on the promotion of RES-H (VHK, 2002). Despite this apparent commitment, no legislative proposal was put forward by the Commission.

This brief overview of the early EU RES policy process underlines the fact that the Commission cannot be considered as a single policy entrepreneur. The Commission's DGs "did not follow identical administrative traditions and paradigms" (Lauber, 2005: 42), but each DG with an interest in this policy process pushed for its own objectives. DG COMP mainly took a state aid-perspective and was keen to limit national subsidies for RES, while DG ENV was strongly supportive of financial support for RES. Within DG TREN the change from Commissioner Papoutsis to de Palacio in the second half of 1999 affected the general RES-E policy direction. While Papoutsis was clearly in favour of tradable certificates and market-based instruments, de Palacio left it to Member States to choose their preferred support system for RES-E (Lauber, 2005). In his analysis of the policy process on the 2001/77/EC directive Lauber concludes that the Commission and the Council were the key players in this process whereas the EP and the ECJ "played a somewhat lesser role" (Lauber, 2005: 42).

6.2.4 *Support schemes for RES-E*

The question of the 'right' support scheme for RES has sparked intensive political and academic discussions since the early days of the EU RES policy process (see 6.2.3). Apart from indirect policy instruments to support RES investments, including RD&D, tax incentives and building regulations, FiT and green certificates are, in the EU, the most commonly used direct policy instruments to stimulate RES-E growth (CEC, 2005c). As of 2005, the majority of Member States used FiT whereas the UK, the

⁶² European Climate Change Programme, Report June 2001, http://ec.europa.eu/environment/climate/pdf/eccp_longreport_0105.pdf

Flemish region in Belgium, Poland, Sweden and Romania opted for a certificate system. While FiT is a price-based instrument, green certificates constitute a quantity-based approach (Menanteau, Finon et al., 2003). Under an FiT scheme, network operators and/or utilities are obliged to purchase green electricity fed into the public grid at a fixed price, which is guaranteed for a longer period of time. Under a green certificate scheme utilities are obliged to provide a fixed quantity of their electricity from RES. RES producers receive a green certificate for each MWh RES-E produced and can sell this certificate on a market for green certificates; this generates an income-stream in addition to the selling price for each unit of green electricity produced.

The pros and cons of each of these instruments have been intensively discussed (Menanteau, Finon et al., 2003; Haas, Eichhammer et al., 2004; Lauber, 2004; Reiche and Bechberger, 2004; Harmelink, Voogt et al., 2006; Szarka, 2007; Fouquet and Johansson, 2008). The merits of FiT are that they provide long-term stability to investors and allow differentiation according to the maturity of the technology and can thus incentivise technological diversity. On the other hand, they are criticised for being too rigid, that they do not stimulate enough competition, and are not compatible with a liberalised EU electricity market and EU environmental state aid regulation. Quantity-based support schemes are praised for steering investments to the most efficient technology and thus reducing costs, while neglecting less mature technologies. Certificate-based systems were also criticised for leading to geographical concentration of RES investments in areas most endowed with RES potential, which might increase local opposition to new developments.

6.2.5 Summary

New Community competences in the field of environmental policy, introduced by the SEA and Maastricht Treaty, served as a jurisdictional basis for RES legislation in 2001 and 2003. While directives with indicative targets for 2010 were adopted covering two RES sectors, electricity and transport, the third sector, heating and cooling, was not subject to EU legislation. This legislative output predetermined the central elements of the subsequent policy debate: targets beyond 2010, a Community framework for the support of RES and additional legislative measures for RES-H/C.

6.3 Policy initiation: low politics meets high politics

The policy process that eventually resulted in the agreement on the 2008 RES directive built on the policy processes described in the previous section (6.2). Two key events in 2004 can be considered as the starting point for the initiation of the more recent policy process. The Commission and the RES industry, supported by the German environment ministry, organised a conference on RES policy in January 2004 that launched the political debate on a 20% EU RES target for 2020. Moreover, as required under directive 2001/77/EC, in May 2004 the Commission published a communication assessing the progress in reaching the indicative RES-E targets for 2010.⁶³ In addition, an EP own-initiative report and the RES industry were pushing strongly for an RES-H/C directive. These bottom-up processes were complemented by top-down initiatives by the European Council that enabled Commission officials to put an ambitious set of actions, including a binding overall 20% EU RES target by 2020, on the agenda. Out of the two central issues of the 2001/77/EC policy process – target-setting and harmonisation of support schemes – it was only target-setting that determined the agenda during policy initiation. This phase, which culminated in the European Council’s political agreement on a binding 20% EU RES target in spring 2007, was strongly influenced by contextual factors.

In January 2004 the Commission and the European Renewable Energy council (EREC) organised a European Conference for Renewable Energy supported by the German environment ministry.⁶⁴ This conference can be considered as the key event initiating a policy discussion on 20% RES targets for 2020 (Interview 27, 45). The conference conclusions considered an EU-wide RES target of at least 20% of gross inland energy consumption by 2020 for the EU as achievable, and urged the EU institutions to start a political process for setting ambitious RES targets.⁶⁵ These conclusions were picked up in an EP resolution calling “upon the Commission and the Council to make the

⁶³ Directive 2001/77/EC required a report by October 2004, but the Commission decided to publish the report earlier, in May 2004, ahead of the “renewables 2004” conference held in Bonn, Germany, in June 2004.

⁶⁴ The “European Conference for Renewable Energy - Intelligent Policy Options” was held on 19-21 January 2004 in Berlin. It convened more than 650 participants from 45 countries and discussed the situation of RES in Europe, including experiences with Community legislation and place and future perspectives. The Conference was held under the high patronage of Loyola de Palacio, Vice-President of the European Commission, Commissioner for Energy and Transport, Jürgen Trittin, German Federal Minister for Environment, Nature Conservation and Nuclear Safety.

⁶⁵ European Conference for Renewable Energy ‘Intelligent Policy Options’, Berlin, 19-21 January 2004, Chair Closing Conclusions 21 January 2004, Conference Conclusions and Recommendations to the International Conference for Renewable Energies ‘renewables2004’, Bonn, June 2004.

necessary efforts to reach a target of 20% for the contribution by renewable energy to total domestic energy consumption in the EU by 2020” (EP, 2004c). The debate was further substantiated by the RES industry in the form of feasibility studies, demonstrating that a 20% RES target was achievable by 2020 (EREC, 2004).⁶⁶ These numbers were broadly in line with the results of the Commission-sponsored FORRES 2020 study that concluded in April 2005 that “a RES share of about 34 % in the electricity sector and of about 20 % in primary energy terms is feasible in 2020 for the EU-25” (Ragwitz, Schleich et al., 2005: 87).

However, forces within the Commission were more hesitant to fix a new RES target that would extend beyond 2010. In May 2004 the Commission was still sceptical towards a new 2020 RES target and argued that:

“acknowledging the outcome of the currently available feasibility studies [...] the Commission considers it necessary to more thoroughly assess the impacts of RES resources, notably with regard to their global economic effects before deciding on adopting targets beyond 2010 and before taking a position on the abovementioned 20% target for the share of renewable energy in 2020. [...] This review will be carried out for the first time not later than the end of October 2005 with a view to opening a debate in order to set in 2007 a target for the period after 2010” (CEC, 2004c: 42).

The Commission’s view, as expressed in this communication, was that it was too early to fix new RES targets beyond 2010 when it was not yet clear whether the existing 2010-targets would be met. During the inter service consultation for the 2004 communication DGs ECFIN, COMP and ENTR blocked an ambitious 2020-target, although DG TREN claimed that the communication was never intended to set new targets, but was rather seen as a naming and shaming exercise (European Voice, 2004). In its communication from December 2005 the discussion on target-setting beyond 2020 was further delayed. With reference to the “on-going assessment related to 2020 targets” (CEC, 2005c: 18) a report was to be published no later than December 2007.

⁶⁶ While the quoted 2004-study covered EU15 only, an updated potential study for the EU25 was published in 2007, and argued that a 21% RES share was achievable by 2020 if ambitious energy efficiency measures were implemented to stabilise energy consumption between 2010 and 2020 (EREC, 2007).

The core objective of this 2005-communication was to comply with Art. 4 of directive 2001/77/EC, which called for an assessment of national RES support schemes which “may be accompanied by a proposal for a Community framework with regard to support schemes”. Despite the eagerness of some Commission officials in the 2000-2001 RES-E policy process to harmonise RES support in the EU (see 6.2.3), the 2005-communication concluded that “the Commission does not regard it appropriate to present at this stage a harmonised European system” (CEC, 2005c: 16). As opposed to target-setting, the harmonisation of RES support schemes was therefore not further discussed at this stage of the agenda-setting process, although it was to become a key issue during issue specification and issue expansion.

In addition to ambitious long-term RES targets, the RES industry and the EP strongly lobbied for an additional directive for RES-H/C in order to stimulate a sector which, unlike RES-E and biofuels, had until then not benefited from specific EU legislation. In a joint declaration the renewable energy industry and environmental lobbying groups called for an RES-H/C target of at least 25% by 2020 with binding national targets for each Member State.⁶⁷ The RES industry lobby argued that an EU directive on RES-H/C was necessary to close the gap between RES H/C, on the one hand, and RES-E and biofuels, on the other (Schäfer, 2005). After the joint declaration it was hoped that “a point of no return towards a European directive for the promotion of renewable heating and cooling” (Schäfer, 2005: 48) would be achieved.

The Commission was, however, sceptical of an additional target for RES-H/C arguing in 2004 that “targets for renewable energy sources’ heating would be difficult to establish because there is no single ‘heating supply industry’ to whom they could be addressed”. It announced that:

“the Commission will bring forward further initiatives – if necessary, legislative proposals – to accelerate the fulfilment of the potential of three key technologies –

⁶⁷ “Joint declaration for a European directive to promote renewable heating and cooling” by European Renewable Energy Council, European Biomass Association, European Geothermal Energy Council, European Photovoltaic Industry Association, European Small Hydropower Association, European Solar Thermal Industry Federation, European Biomass Industry Association, European Renewable Energy Centres Agency and European Wind Energy Association (published in 2005, publication without date), http://www.erec.org/fileadmin/erec_docs/Documents/Publications/EREC_RES-H.pdf.

modern biomass heating, solar heating and geothermal heat. These initiatives could include targets for specific technologies, or requirements for suppliers of heating oil and gas to supply e.g. wood pellets and biogas” (CEC, 2004c: 37).

In addition, the Commission’s Biomass Action Plan published in December 2005 announced that new specific legislation on RES-H would be considered in 2006 (CEC, 2005a). In its conclusions to the Biomass Action Plan the Council invited the Commission to table proposals for the promotion of RES-H/C.

The Commission’s defensive position on future RES policy proposals changed rather abruptly when they announced an RES Road Map in its energy Green Paper from March 2006 that would consider

“which targets or objectives beyond 2010 are necessary, and the nature of such targets, in order to provide long term certainty for industry and investors [...]. Any such targets could be complemented by extended operational targets on electricity, fuels and possibly heating” (CEC, 2006b: 12).

The Commission’s previously announced timetable, to propose a new RES target only at the end of 2007, was therefore already obsolete a couple of months later. This announcement was welcomed by the Spring Council 2006 which considered increasing the RES share in the EU to 15% by 2015 (Council, 2006a: 15). The European Council invited the Commission to propose a set of actions which should serve as basis for a prioritised Action Plan to be adopted by the European Council at the spring summit 2007.

In January 2007 the Commission’s RES Road Map, published as part of the Commission’s climate and energy package, proposed the establishment of a mandatory overall 20% EU RES share of energy consumption in the EU by 2020 (CEC, 2006d). The Commission’s proposal was therefore more ambitious than supported by Member States (20% instead of 15%, mandatory instead of indicative. 2020 instead of 2015), and more demanding than earlier Commission statements. Moreover, it gave up the sectoral approach as called for by the EP and the RES industry – two key Commission allies for an ambitious EU RES policy process.

This radical shift in the Commission's policy agenda was supported by the European Council at the spring summit 2007. How can this radical shift in the EU's RES policy agenda during policy initiation be explained? This section attempts to answer this question by analysing the role of the key variables elaborated earlier (see 3.3): contextual factors, policy entrepreneurs, issue definition and institutional venues.

6.3.1 Contextual factors: a policy window?

The large majority of interviewees underlined the crucial role of contextual factors during policy initiation. Changes in the policy environment affected the significance and consequences of the reports required under directive 2001/77/EC. Commission officials expressed the view that the Barroso-Commission's unexpected priority on energy and climate was mainly due to contextual factors (Interview 29), which created a political momentum that pre-empted major opposition against this policy initiative (Interview 33). This political dynamic was related to several contextual factors in the final stages of policy initiation in 2006 and 2007, which were of particular importance in autumn 2006 when the RES Road Map and the climate and energy package were finalised (Interview 45). Key contextual factors included: the Stern report, Al Gore's film "An Inconvenient Truth", the fourth IPCC assessment report, as well as the Russia-Ukraine gas crisis which complemented the focus on climate change by increased interest in energy security.

The Stern report was published in October 2006 and pointed to the overall economic costs of global climate change if no action was taken against rising GHG emissions. It put forward the widely reported estimate that business as usual would cause overall costs and risks of climate change equivalent to losing at least 5% of global GDP annually, depending on the assumptions this figure could even rise to 20% of GDP; by contrast the costs of action could be as low as 1% of global GDP (Stern, 2007). This emphasis on economic benefits, as opposed to costs of climate change policies, constituted a major shift within the climate change debate. When Gordon Brown, then UK Chancellor of the Exchequer, commissioned the Stern review in July 2005, one of his objectives was indeed to "put climate change on the agenda of economic policy makers" (HM Treasury, 2007). Moreover the Stern review helped to put climate change on the EU energy policy agenda. The publication of the report signalled the UK's

support for an ambitious EU climate policy. The informal European Council at Hampton Court, organised in November 2005 by the UK Council Presidency, had already called for an energy policy for Europe and underlined the UK's concerns in relation to climate change and energy security (Interview 36).⁶⁸ The UK's clear support for an ambitious climate policy – besides Germany's ambitions in this policy area (see below) – made it worthwhile for the Commission to pursue energy and climate further (Interview 32), and thus go beyond mere reporting requirements on the achievement of the 2010 RES targets. It was also an important signal from a large Member State, which was until then reluctant to support an EU energy policy. This was timely support for the Commission who had announced the publication of a new “Green Paper on a secure, competitive and sustainable energy policy for Europe” in its Work Programme 2006 published in October 2005 (CEC, 2005d).

In addition to the Stern report, which launched an extensive debate about the consequences of and necessary measures against global climate change, Al Gore's documentary film “An Inconvenient Truth” on global climate change was released in autumn 2006 in European cinemas, and stimulated huge public interest in climate change.⁶⁹ The effect on public opinion was put forward by several Commission officials as an important factor during policy initiation within the Commission (Interview 29, 33, 45).

A third contextual factor was the publication of the fourth IPCC assessment report in the first half of 2007. While the Stern report underlined the economic argument to take measures against global climate change, and Al Gore's film brought the issue more widely onto the public agenda, the fourth IPCC assessment report underlined the urgency to act by publishing the most recent scientific evidence.⁷⁰ The report published

⁶⁸ The UK's ambition to move forward with a more ambitious international climate policy agenda was also reflected in the UK's G8 Presidency and the G8 summit that was held at Gleneagles (6-8/07/2005); the final summit communiqué was entitled “Climate Change, Energy and Sustainable Development”.

⁶⁹ The fact that the Nobel Peace Prize for 2007 was shared, in two equal parts, between the IPCC and Al Gore “for their efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such change” (The Norwegian Nobel Committee, 2007) can serve as an indication of the impact of Al Gore's film.

⁷⁰ The fourth IPCC assessment report was published in four steps: On 02/02/2007 the WG1 “The Physical Science Basis” report was launched in Paris, on 06/04/2007 the WG2 “Impacts, Adaptation and Vulnerability” report was launched in Brussels, on 04/05/2007 the WG3 “Mitigation of Climate Change” report was launched in Bangkok and on 17/11/2007 the synthesis report was launched in Valencia. For more information see: www.ipcc.ch.

in February 2007, and therefore just before the EU spring summit of 2007, concluded that global warming was “unequivocal” (IPCC, 2007: 5) and thus highlighted the urgent need for action (e.g. Harvey, 2007). Ongoing post-Kyoto negotiations⁷¹ added an additional element to the discussions at the EU level. The EU wanted to maintain its leadership position⁷² in international climate change policy in the run-up to the Poznan and Copenhagen summits (Interview 26, 27).

Although less prominent at this stage of the policy process, energy security had already been put on the EU’s energy policy agenda by the UK Presidency at the informal Hampton Court summit. This was mainly due to the UK’s strong concerns about energy security after having become a net importer of gas (Scrase and Ockwell, 2009). Interest on energy security was reinforced at the turn of the year 2005/06, when a gas dispute between Russia and Ukraine resulted in reductions in Russian gas supplies to European countries, including Italy and France. In reaction to this disruption the incoming Austrian Presidency announced that energy security would be one of its priorities (Arnold, Benoit et al., 2005; Adams, Anderson et al., 2006). A regularly quoted figure was the forecast in the 2006 Green Paper that the EU’s energy import dependency would rise from 50% in 2006 to 70% over the next 20 to 30 years under business as usual scenarios. High oil prices also played an important role in favour of RES (Interview 29) in that they reduced the cost differential between fossil fuels and RES. The energy Green Paper 2006 noted that oil and gas prices had nearly doubled in the EU since 2004 (CEC, 2006b: 3) and continued increases in oil and gas prices until mid-2008 emphasised this problem further.

While there was large agreement among interviewees that the climate change debate strongly affected the RES policy process, there was no consensus on the role of energy security. One interviewee expressed the view that the energy security debate did not play a major role for the RES policy process at this stage since the link between energy

⁷¹ The Kyoto Protocol is an international agreement that sets binding GHG emission targets for 37 industrialised countries and the European Community for the current commitment period until 2012. Post-Kyoto negotiations refer to the process on a follow-up agreement for the period after the first commitment period and the EU hope that such an agreement would be concluded at the Copenhagen summit in December 2009 – the Poznan summit in December 2007 was a preparatory meeting in this process.

⁷² The EU’s perception of being in a leadership position in global climate change negotiation is mainly based on the introduction of the world’s first emissions trading system (EU ETS) (see also Skjærseth and Wettstad, 2008).

security and RES was not widely acknowledged (Interview 28). Other observers argued that it was not only about climate change but also security of supply (Interview 31, 43), and both were considered as perfectly aligned reasons to push for an RES target (Interview 31).

Against this background Commission officials argued that the time was right to move forward towards a common energy policy (Interview 36), and that there was a policy window for a binding RES target (Interview 46). These contextual factors can be considered as opening up a policy window due to significant changes in the problems- and politics-streams (Kingdon, 1995 [1984]). A focusing event (the Russia-Ukraine gas crisis), and new data on climate change (IPCC report), were reinforced by significant public support that climate change should be a policy priority. This raises the question to what extent policy entrepreneurs could seize this opportunity to initiate a new policy initiative.

6.3.2 *Policy entrepreneurs: the Commission in responsive mode*

Key policy entrepreneurs at this stage of the policy process were MEPs, Commission officials, the German Council Presidency, and the RES industry. Their motivations as policy entrepreneurs were quite diverse. MEPs and Commission officials sought the expansion of Community jurisdiction in the field of RES policy and partially followed their values and beliefs. In Kingdon's (1995 [1984]) terms MEPs and Commission officials thus invested resources for anticipated future bureaucratic (expansion of jurisdiction) and purposive (values and beliefs) gains. The German Council Presidency pursued economic interests of its RES industry and Chancellor Merkel wanted to benefit from the positive policy image of RES policy⁷³. The RES industry aimed for a long-term regulatory framework. While previous RES policy processes provided the basis for policy entrepreneurs' action, changes in the policy environment were of particular importance for a shift in the Barroso-Commission's policy priorities. Key issues during policy initiation were whether the RES target would be binding or indicative and whether it would be an overall or a sectoral target.

⁷³ After the political agreement on the 20-20-20 targets at the EU spring summit 2007, the German Chancellor Merkel was hailed as "Klimakanzlerin" in the German press e.g. (Dehmer, 2007)

The change in the Commission's political agenda to energy and climate change constituted a radical change in policy priorities. In 2004 the incoming Commission President Barroso stressed the revival of the Lisbon Strategy as his key priority (CEC, 2005e). Presenting this strategy to the EP Barroso made clear that the economic pillar needed to prevail over social and environmental issues (Agence Europe, 2005). The revival of the Lisbon Strategy, however, proved to be difficult⁷⁴ and in 2005 Commission President Barroso realised that his Commission had no clear headline topic (Interview 33). The Commission started to look for alternative themes and eventually adopted climate change as a key theme.

The Commission picked up the 15% RES target put forward by the European Council in March 2006 to build an ambitious climate and energy package (Interview 33). After Hampton Court it was hoped that this shift in the Commission's political agenda towards energy and climate issues would raise the Commission's profile (Interview 26, 27, 28, 32, 33). The EP, the RES industry, and Member States that had been successful with respect to the 2001 RES-E directive, supported this shift in the Commission's political agenda (Interview 28). The strong push by the EP, and the increasing evidence that the existing indicative targets would not be met, gave the Commission the confidence to propose an ambitious RES target. This was strongly supported by the incoming German Council Presidency (Interview 36, 47).

The agenda-shaping power of the Council Presidency (Tallberg, 2003) significantly affected policy initiation. Firstly, the UK Presidency's informal Hampton Court summit, and then the German Presidency's clear support for ambitious climate and RES targets, influenced the Commission's agenda-setting and thus the EU's energy policy agenda. Hampton Court was important since heads of state gave a clear mandate to the Commission to develop a European energy policy (Interview 45). It was an essential starting point for the climate and energy package and thus for the new RES directive. This ambition was backed later that year by clear signals from the incoming German Presidency. The Commission knew that Germany would support ambitious binding GHG reduction and RES targets as was expressed during preparatory meetings between the Commission and the incoming German Presidency (Interview 47); Germany

⁷⁴ The renewed Lisbon Strategy published at the end of 2007 included energy and climate as one of four priority areas (CEC, 2007g).

indicated early in the process that it would support a climate and energy package with ambitious targets (Interview 27, 30)⁷⁵. The German Presidency's ambitions in this area were seen as a window of opportunity within the Commission (Interview 40).

A Council official expressed the view that there was a perfect alignment between the Commission's Road Map and the German Presidency's agenda, and many Member States' interests (Interview 31). What was important was not only the number of Member States supporting new ambitious climate and energy proposals, but also the fact that large Member States, such as the UK, Germany, and France, explicitly supported the initiative. France had published a memorandum on a revival of European energy policy in January 2006 shortly after the Hampton Court summit (MINEFI, 2006). The agreement on the need for action among these three Member States was even more significant for EU agenda dynamics, since all three Member States were acting or about to act as Council Presidency with leverage on the agenda: the UK in the second half of 2005, Germany in the first half of 2007 and France in the second half of 2008.

The EP was another important agenda-setter. In continuation of the previous RES policy processes, in February 2006 Mechthild Rothe MEP (PES-DE) put forward an own-initiative report on the basis of the EP's most powerful formal instrument to influence the EU policy agenda. The report, adopted by a majority of the EP on the basis of Art. 192⁷⁶ EC Treaty, requested that the Commission seek "to submit to Parliament by 31 July 2006, on the basis of Article 175(1) of the EC Treaty, a legislative proposal on increasing the share of renewable energy for heating and cooling" (EP, 2006a). In an Annex it called for a realistic and ambitious EU target for RES-H/C with the aim of at least doubling their share of energy supply, and for effective national targets to contribute to this EU target. The EP's objective was further underlined in its resolution to the 2006 Green Paper where it called "on the Commission to present a proposal for a directive on heating and cooling from renewable energy sources as soon as possible"

⁷⁵ At the third meeting of the Amsterdam Forum (see 6.4.3), 21-22/11/2006, Germany supported an overall binding 20% EU-RES target by 2020, http://www.senternovem.nl/amsterdamforum/amsterdam_forum_iii/proceedings/road_map_on_renewable_energy_sources.asp.

⁷⁶ By adopting an own-initiative report under Art. 192 EC Treaty, the EP can "request the Commission to submit any appropriate proposal on matters on which it considers that a Community act is required for the purpose of implementing this Treaty" (see also 3.3.3).

(EP, 2006b). The EP's resolution on the Green Paper 2006 supported the Commission's approach – the elaboration of an RES Road Map as mentioned above – but asked the Commission to “set binding sectoral targets for renewables in order to achieve 25% of renewables in primary energy by 2020” (EP, 2006b).

Thus the EP was an important ally for the Commission with respect to an ambitious RES target, but was insisting on a sectoral approach. Also the RES industry and environmental NGOs continued to push for sector specific RES policy objectives. In 2006 the European Wind Energy Association (EWEA) argued that “it makes no sense providing a headline figure of 20% without providing the main energy using sectors of electricity, heat and transport, with their own individual targets” (Massy, 2006). At the start of 2007, ERES/EWEA renewed its calls for sectoral targets as a crucial policy element (Massy, 2007). Drafts of the RES Road Map with an overall 20% mandatory RES target, instead of sector specific targets, were strongly criticised for being ineffective. The RES industry was keen on sectoral targets building upon the existing sectoral approaches for RES-E and biofuels, in order to prevent any major changes to the existing 2001 RES-E directive that had proved to be a successful policy instrument (Interview 27).

In response to the EP's request energy Commissioner Piebalgs promised the EP that the Commission would come up with an RES-H/C proposal (Interview 30). In summer 2006, Commission officials started drafting an RES-H/C proposal (Interview 32). Even in October 2006 Piebalgs announced that “the new target would include separate sectoral targets [...], but the EC [the Commission] was still discussing how these would work, for example if they would be differentiated between Member States” (Power in Europe, 2006: 14). This was, however, abandoned soon after and replaced by an overall binding target, leaving it to the Member States to determine how to spread an overall target over the three RES sectors.

The shift from sectoral targets, as proposed by the EP and the RES industry, to an overall RES target was predominantly a strategic decision by Commission officials. Against past experience with indicative targets, the Commission's DG TREN was keen to have binding targets, but the Commission recognised that it could not achieve both sectoral and binding targets. DG TREN officials' major priority was to have a binding

target, and it was happy to leave it to Member States how to achieve the national binding target (Interview 45); flexibility for Member States was the price to pay to achieve mandatory national targets (Interview 33). Most Member States and industry representatives would have perceived binding sectoral targets instead of a binding overall target as too rigid, whereas a binding overall target allowed for sufficient flexibility and thus increased acceptance of the proposal (Interview 29). Furthermore the complexity of the task to break down sectoral targets into national targets prevented a sectoral approach (Interview 45). A binding target in one directive covering all three RES-sectors was also preferred on the grounds of good governance and cutting red tape under the Commission's drive for "Better Regulation"⁷⁷ (Interview 32).

The agreed overall RES target-level of 20% was mainly based on the impact assessment (CEC, 2007e: 22-23). Cost-benefit analysis showed that going beyond 20% would be much more expensive (Interview 32). Besides this analytical aspect, it was considered as helpful to have the clear political message '20-20-20 by 2020'⁷⁸ (Interview 32). The 20% RES target was seen as a logical step in a long-term process that started back in 1997 with the White Paper's 12% RES target (Interview 28, 30, 34). The binding target could be seen as a response to the failure of existing indicative EU targets (Interview 27, 31, 32). Yet, despite paying the political price of flexibility by giving national control over the setting of sectoral targets, the acceptance among Member States of the overall binding 20% RES target was far from guaranteed prior to the 2007 Spring Summit. The Commission had to prove its skills as policy entrepreneur by building winning coalitions and selling its proposals (Pallis, 2006) to Member States.

At an informal meeting in December 2006, 25 out of 27 Member States voiced opposition to a binding RES target (Interview 32). Only two Member States – Denmark and Germany – supported binding targets at the time, but the Commission considered proposing a binding renewable target in the RES Road Map as a response to the slow RES progress so far (Agence Europe, 2006). The Commission's decision to go ahead

⁷⁷ The "Better Regulation" programme was launched in 2002 "to simplify and generally improve the regulatory environment. It is designed to cut red tape, improve the quality of regulation and design better laws for consumers and business alike" (CEC, 2006a). The relevance of "Better Regulation" in developing new energy proposals was also underlined in the Commission's work programme for 2006, see COM(2005)531.

⁷⁸ 20% RES share, 20% GHG emissions reduction as compared to 1990 levels, 20% increase in energy efficiency.

with the proposal for a binding target was taken by key people within the Commission (for example, Piebalgs, Christopher Jones (deputy head of Piebalgs' cabinet) and Catherine Day (Director-General of SG)), because they saw a chance of success (Interview 32). This was backed by the fact that the incoming German Presidency clearly signalled its support for a binding RES target (Interview 29, 30, 47).

The Commission tried to sell the package to Member States in order to ensure political backing at the Spring Council 2007. Between January and March 2007 top level people, including Barroso himself, Commissioners and members of the cabinets, were travelling to national capitals to do a "selling job" of the binding target (Interview 32, 45). This was a coordinated effort between DG TREN, DG ENV and DG ENTR (Interview 32). Although this did not prevent the Energy and Environment Councils from opposing the binding nature of the target, these preparatory discussions could have helped to achieve agreement at the Spring Council. Shortly before the Spring Council the Commission published results of a Eurobarometer survey pointing at the overwhelming support of EU citizens for the climate and energy package (CEC, 2007c).⁷⁹

After the publication of the RES Road Map in January 2007, the German Presidency suggested that energy ministers endorsed a binding 20% RES target in overall EU energy consumption by 2020, and called for a new framework directive for RES including specific national targets on the basis of National Action Plans (Council, 2007c). Member States, however, did not agree on the nature of the target (binding or indicative) and the level of the target for biofuels (12.5% or 10%). A revised version of the draft conclusions therefore emphasised effort sharing among Member States, and the need to take into account "national circumstances, potentials and starting points" (Council, 2007c). Energy ministers agreed on the 20% target, differentiated national overall targets, and to leave it to Member States to decide on national sectoral targets. A binding 20% target met resistance from France and the UK, but was supported by DE, DK, ES, and IT (Power in Europe, 2007). It was left to the European Council to decide on the nature of the target.

⁷⁹ One interviewee expressed the view that Barroso used and stimulated public mobilisation before the Spring Council 2007, by giving interviews in several European media to ensure that the heads of state would be measured against concrete agreements on climate change, i.e. the binding targets proposed by the Commission (Interview 27).

At the Spring Council 2007, the European Council agreed on the binding 20% RES target in overall EU energy consumption by 2020 “taking account of different national starting points and potentials, including the existing level of renewable energies and energy mix”, and “leaving it to Member States to decide on national targets for each specific sector of renewable energies (electricity, heating and cooling, biofuels)” (Council, 2007a). This agreement was subject to internal European Council dynamics.⁸⁰ It was widely agreed that the German Chancellor Merkel played a key role in getting the binding overall 20% target accepted. One explanation put forward was that Merkel succeeded in convincing other Member States that enough flexibility would be given to Member States to achieve their target (Interview 26). There were early signals that the ‘effort sharing’ of the RES target would be decided flexibly, and not only on the basis of the national RES potential but also considering GDP and other factors (Interview 28).⁸¹

Agreement was also made possible by a complete U-turn of UK policy from its traditional policy, a decision taken at the top level (Interview 36). The UK’s position was initially less in favour of an RES target but supportive of a low carbon target; this explains why the UK initially rejected an RES target⁸². For the UK it was about tackling climate change and not about picking certain technologies. The UK preferred that Member States decide how to implement a low carbon target according to national circumstances. Before the spring summit the UK changed its position and supported a binding RES target.

An observer considered the RES Road Map as much a Commission initiative as it was an initiative from Member States (Interview 37). The UK, for example, continued after its Presidency to build up international leadership in climate change and pushed for EU level initiatives in this area. Similarly, Germany and Spain clearly signalled their support for ambitious 2020 RES targets.

⁸⁰ The specific dynamics of the spring summit 2007 are underlined by the fact that, for example, Poland had internally agreed before the summit to oppose a binding target, but at the spring summit the Polish president agreed to the binding target in exchange for other things (Interview 39).

⁸¹ Support by France and other pro nuclear countries has reportedly been achieved by introducing a cross-reference to the contribution of nuclear energy to CO₂ emission reduction (para 11) in the spring summit conclusions.

⁸² This view was expressed by the UK at the third meeting of the Amsterdam Forum, 21-22/11/2006, http://www.senternovem.nl/amsterdamforum/amsterdam_forum_iii/proceedings/road_map_on_renewable_energy_sources.asp.

6.3.3 *Issue definition: climate change, energy security and internal market*

Climate change was the key issue frame during policy initiation. The shift from an additional sectoral target for RES-H/C to an ambitious binding overall 20% EU RES target, was clearly favoured by the Commission's package approach to energy and climate as its new key policy priority. As for the RES-E directive in 2000/2001 (Collier, 2002), a major rationale for the RES Road Map was the reduction of GHG emissions. At the same time after the conflict on gas transit between Russia and Ukraine in 2005/2006, energy security became an increasingly important justification for new RES legislation.

In its resolution for an RES-H/C directive in February 2006, the EP's first objective was to contribute to the EU's energy security followed by creating jobs and improving the environment (EP, 2006a). The Commission's Road Map referred first to climate change and second to the increased dependence on oil and other fossil fuels as well as growing imports (CEC, 2006d). Moreover, the Road Map points at the €20 billion turnover of the EU RES industry and the 300,000 people employed in this sector.

As in the run-up to the 2001 RES-E directive, internal discussions in the Commission reflected the DGs' different paradigms (Lauber, 2005). DG ENTR was very critical and DG ECFIN was quite critical of the proposal, and both were either opposed to a target or argued that 20% would be too ambitious (Interview 45). The high interest in the dossier by the Commission President helped the process in that objections brought forward by DG ENTR and DG ECFIN were overruled by Barroso's cabinet (Interview 33). DG ENV's main objective was to have a GHG-target included as an objective of a European energy policy (Interview 40). DG ENV initially questioned the RES directive and the separate RES target since it claimed that modelling results showed that carbon trading was sufficient to achieve GHG reductions and to promote RES investments. However, since the RES-E directive from 2001 was considered as the probably most successful EU instrument to reduce carbon emissions, TREN argued strongly for a separate RES target (Interview 32).

6.3.4 *Institutional venues: legitimisation by the European Council*

Following the above definition, according to which institutional venues constitute "institutional locations where authoritative decisions are made concerning a given

issue” (Baumgartner and Jones, 1993: 32), policy entrepreneurs acted predominantly within the existing institutional venues to initiate a new RES policy process. Relevant institutional venues that affected policy output at this stage of the policy process were Commission internal working groups and the European Council.

Within the Commission the high political salience of the issue, and thus the intervention by high-level Commission officials, helped to reach cross-departmental agreement on the overall binding 20% EU RES target. At the more technical level this agreement was supported by many inter-service groups and processes that were established within the Commission in order to get consensus across the different DGs and their particular frames and interests (Interview 45). Although inter-service groups involving relevant DGs are common practice within the Commission during the preparation of a new legislative proposal and its impact assessment, the preparation of a joint impact assessment (CEC, 2008b) for all legislative proposals of the climate and energy package, point to a high intensity of inter-service discussions that went beyond the usual Commission-internal inter-service-consultation (Interview 45). This enabled and required compromises between the different DGs in order to put forward the legislative package called for by the European Council.

The key institutional venue during policy initiation was the European Council. It was first the informal summit at Hampton Court in November 2005, then the Spring Council 2006 where the Green Paper was presented, and then the Spring Council 2007 that illustrated the European Council’s leverage on the EU agenda by serving as a venue to sanction and legitimise policy ideas and new proposals (Nugent, 2006; Rasmussen, 2007). At Hampton Court the heads of state agreed to support a common energy policy and provided the Commission with a strong mandate to develop the climate and energy package. This was reiterated at the European Council meetings in December 2005 and March 2006. Discussions and processes in preparation for the Spring Council 2007 strongly illustrate high-level agenda-setting dynamics.

After ministers could not agree on the nature of the 20% EU RES target in the preparation phase of the Spring Council 2007, the final decision was left to heads of state who agreed on the binding target and thus followed the Commission’s suggestion. The Spring Council 2007 showed the significance of this institutional venue. Even

officials who were directly involved in the preparations of the summit were surprised that the binding nature of the 20% RES target was agreed. Besides the efforts of policy entrepreneurs like the German Chancellor Merkel, this success was also put down to the negotiation process of the European Council (Interview 47). It might also have helped that, at the high political level, there was insufficient understanding of the technical details; heads of state signed a blank cheque and details had to be clarified afterwards (Interview 26, 33).

6.3.5 *Summary*

This high-level attention within and outside the Commission ensured that the long-term bottom-up policy processes sustained by Commission officials, MEPs and the RES industry resulted in the proposal of binding long-term RES targets. Low-level politics was complemented by high-level politics. Policy developments since the late 1990s, and insufficient progress on agreed targets, helped Commission officials to push for more ambitious targets, supported by the RES industry and MEPs. Targets beyond 2010 were already put on the agenda by the 2001 RES directive and its reporting requirements. The discussion during policy initiation focused mainly on the level and nature of the RES target.

A policy window was opening up due to contextual factors and was seized by the Barroso Commission to gain profile. This was also enabled by the incoming German Presidency that signalled support for ambitious RES and climate targets. The Commission acted as policy entrepreneur by ‘selling’ its objectives to Member States. The binding overall 20% RES target was a strategic choice to give Member States sufficient flexibility to allocate their national resources according to their preferences. The European Council had provided the Commission with strong legitimacy to put forward ambitious proposals and – under strong public pressure – used its authority to agree to a binding EU RES target.

Independent of the reason why the Spring Council 2007 reached agreement on the binding target, the key assumption of the analysis here is that the high politics agreement by the heads of state had important implications for the subsequent policy process. The Spring Council conclusions underlined that all Member States agreed at the highest level on the urgency of this initiative and that all players were moving in the

same direction (Interview 37). The RES target could no longer be questioned by anyone (Interview 34); it made Member States conscious that this was a serious issue and high-level meetings continued throughout the preparation of the package (Interview 32). The remainder of this chapter analyses if, and to what extent, this high politics involvement affected the subsequent policy processes.

6.4 Issue specification: GO trading

After the political agreement on an overall 20% EU RES target by the heads of state, the Commission had the task of translating the political compromise into a legislative proposal. The Commission was faced with two main challenges: to allocate national contributions to the overall target in a fair way, and to ensure efficient use of the available renewable energy resources across Europe (Johnston, Neuhoff et al., 2008). The Commission's proposal, published in January 2008, addressed these challenges in two ways. First, national targets were calculated on the basis of a flat rate of 5.5% for each member state, plus a contribution based on GDP per capita and the inclusion of early actions in RES investments. Second, two trading approaches were suggested to enable an efficient use of renewable resources across national borders: national governments could trade their surplus or deficit RES generation, and market participants were allowed to trade guarantees of origin (GO) across Member States independently of physical trade.

Key elements of the proposed RES directive as published by the Commission in January 2008 (CEC, 2008d) included:

- Binding overall national RES targets and indicative trajectory (Art. 3/Annex I);
- Member states shall develop national action plans (NAPs) outlining the shares of RES-T, RES-E and RES-H/C in 2020 and measures to be developed to achieve these targets including national policies to develop existing and new biomass resources in fulfilling the requirements in Art. 12 to 17 (Art. 4);
- Member States need to recognise GOs from another MS, otherwise the Commission can adopt a Decision and can require the refusing MS to recognise it (Art. 6);
- GOs can be used to claim benefits from the national support system (Art. 8);
- If the RES share in a Member State equals or exceeds the indicative trajectory, GOs can be transferred between persons in different Member States after

Member States' prior authorisation. By 31/12/2014 the Commission shall assess the costs and benefits of GO transfer between Member States (Art. 9);

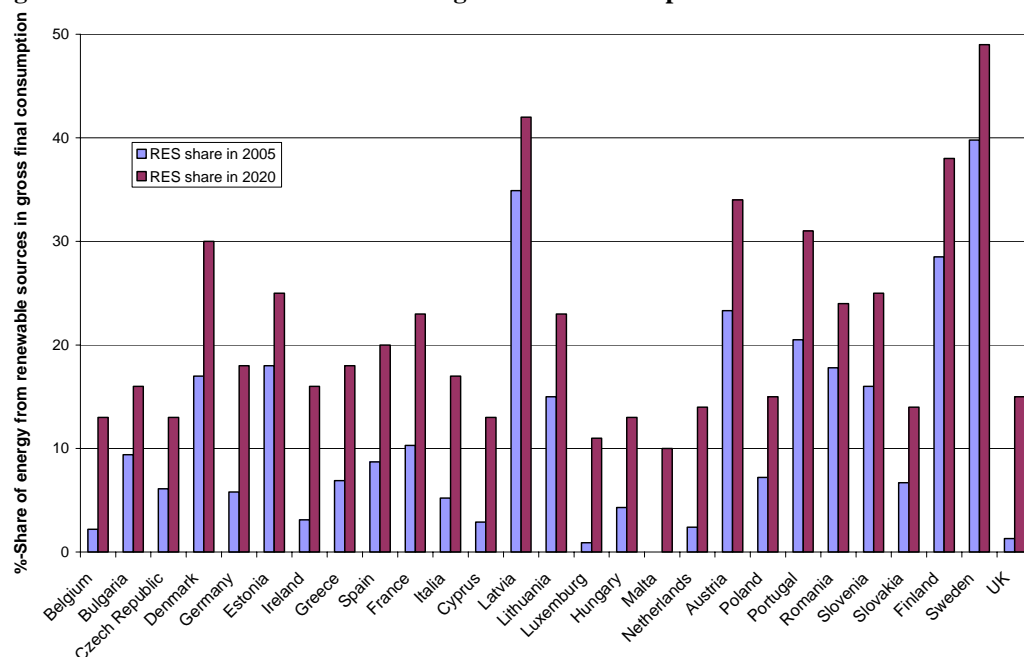
- Priority grid access for RES-E as long as electricity system security is guaranteed (Art. 14);
- Sustainability criteria for biofuels and bioliquids (Art. 15-18).

The Commission's translation of the overall binding target into mandatory national targets followed the Spring Council's conclusions by "taking account of different national starting points and potentials, including the existing level of renewable energies and energy mix" (Council, 2007a: 21). The key issue was the methodology used to calculate national targets in order to have fair distribution among Member States (Interview 45). The Commission was keen to find a consensus on targets not only during the drafting process but also in the negotiation stage (Interview 37). Discussions were kept open and there were very intensive efforts by the Commission to liaise with Member States (Interview 37). As for the methodology for calculating national RES targets, it was soon realised that a strictly RES potential-based target setting would not be feasible since the wealth discrepancies within the enlarged EU were considered as too great (Interview 32). Agreement on a methodology combining a flat rate of 5.5%, and GDP per capita distribution, helped to avoid difficult discussions on national potentials (Interview 32).

This methodological solution to the problem was convincingly sold to Member States to ensure their support. After the Spring Council the binding 20% RES target had the absolute highest political priority, and the Commission worked as hard as it could to develop a proposal (Interview 31). High-level meetings were organised between the Commission and Member States in summer 2007 (Interview 45). Before the Commission adopted the climate and energy package, their top officials (Commissioners and members of their cabinets) went to national capitals to explain the targets, the underlying economic analysis, as well as the costs and benefits (Interview 32). Thus Commission officials continued their entrepreneurial approach to target-setting that was already visible during policy initiation. In promoting the targets to national governments, it helped the Commission that no Member State was taken by surprise, and that there was no strong opposition from the very beginning (Interview 37, 40), although a few Member States considered their targets as too ambitious.

The methodology for national target-setting contributed to a fair distribution of the overall EU RES target among Member States. However, it was not considered as sufficient for an efficient use of RES across the EU (Johnston, Neuhoﬀ et al., 2008) given the ambitiousness of the RES targets and quite large discrepancies of RES potential among Member States. Figure 5 shows the proposed national targets and illustrates the considerable differences among Member States regarding their RES share in 2005 and the expected increase by 2020.

Figure 5: National share of RES in % of gross final consumption in 2005 and 2020



Source: European Commission (2008d)

Discussions on target-setting were linked to the question of support mechanisms because, depending on the national target, trading was considered as an important measure to reduce costs in reaching the targets (Interview 32, 45). As a consequence, similar to the 2000/2001-RES policy process, the question of the right support mechanism became a key issue. However, while discussions during the drafting of the 2001 RES-E Directive were mainly based on theoretical advantages and disadvantages of each instrument due to the lack of sufficient experience with them, by 2007 several assessments of the experience with national support schemes had been published (e.g. Haas, Eichhammer et al., 2004; CEC, 2005c; Mitchell, Bauknecht et al., 2006). One key

message of these studies was that, against the expected theoretical benefits of certificate trading schemes (see 6.2.4), FiT proved to be more effective and cost-efficient.⁸³

In 2005 the Commission had argued in its assessment report as required under directive 2001/77/EC, that it was too early to harmonise national support schemes:

“While gaining significant experience in the EU with renewable support schemes, competing national schemes could be seen as healthy at least over a transitional period. Competition among schemes should lead to a greater variety of solutions and also to benefits: for example, a green certificate system gains from the existence of a feed-in tariff scheme, as the costs of less efficient technologies fall due to the technological learning process, which in turn leads to lower transfer costs for consumers. Moreover, it is too early to compare the advantages and disadvantages of well-established support mechanisms with systems with a rather short history. Therefore, and considering all the analyses in this Communication, the Commission does not regard it appropriate to present at this stage a harmonised European system.” (CEC, 2005c: 16).

The conclusion, that it was premature to propose a harmonised Community framework for the support of RES-E in the EU, was reiterated in the Commission Staff Working Document published alongside the RES directive in January 2008 (CEC, 2008a). The Commission still argued that, “harmonisation of support schemes remain a long term goal on economic efficiency, single market and state aid grounds, but that harmonisation in the short term is not appropriate” (CEC, 2008a).

Nonetheless in the 2008 RES directive the Commission proposed a trading mechanism on the basis of guarantees of origin (GO) that would have established an EU-wide certificate scheme in the long-term (see also discussion below). This leads to the following question: how can the emergence of this provision in the RES directive proposal during issue specification be explained, and how did this affect the policy process? The following section illustrates the leverage of Commission officials on EU

⁸³ This is not to argue that feed-in tariffs are under any circumstances ‘better’ than green certificates, but as implemented in EU Member States until then, feed-in tariffs were superior to green certificate schemes in terms of effectiveness and cost efficiency. It is however important to underline that each policy instrument’s performance depends on its actual design and socio-institutional context.

agenda-setting during issue specification and how outside players influenced this process.

6.4.1 Policy entrepreneurs: Commission officials' leverage on the agenda

High-ranking Commission officials were the key drivers behind the trading mechanism proposal. They were keen to put their “pet proposal” (Kingdon, 1995 [1984]) on the decision agenda. This attempt to set the agenda during issue specification was strongly influenced by Member States and interest groups.

Christopher Jones, deputy head of Piebalgs' cabinet, used the drafting process to push for an EU-wide market-based support system that would be both compatible with the internal market and more cost effective, while providing flexibility to Member States. For the purpose of introducing a trading mechanism in the new RES directive, Christopher Jones recruited Peter Vis to Piebalgs' cabinet in May 2007. He was given the task of overseeing the RES directive drafting process and assessing whether or not an EU-wide green certificate scheme could be introduced in the RES directive (Interview 41). Peter Vis was chosen because he was one of the key Commission officials who had developed the EU ETS, and therefore had detailed knowledge about trading systems and the process of introducing them at EU level.⁸⁴ However, whereas the Commission had been ahead of national authorities in the introduction of ETS, in the RES case it could only proceed incrementally as it was faced with more than 27 existing national RES support schemes (Interview 41).

Piebalgs' cabinet strongly pushed for an EU-wide green certificate system on the basis of GO certificates. Drafts of the RES directive written by DG TREN's unit D1, responsible for the RES directive, were regularly redrafted by the cabinet on the issue of certificate trading mechanisms (Interview 41). Not all people within D1 were convinced that a Community-wide system of tradable green certificates would be the most effective and cost-efficient solution to support RES in the EU (Interview 29, 45), as reflected in their assessments of RES support mechanisms in the EU (CEC, 2005c; 2008a). Commission officials, sceptical of an EU-wide GO trading system, could build on the experience with RES policies in the EU since the late 1990s (Interview 29, 33,

⁸⁴ On the key role of Peter Vis in relation to the initiation of EU ETS see Skjærseth and Wettestad (2008: 74-87).

45) and point to the policy experience gained so far. By contrast, DG ECFIN and DG ENV (Interview 41, 42) supported the trading idea. Both DGs were keen to combine the RES directive with ETS after models showed that a harmonised certificate system would be less expensive compared with the continuation of national support schemes (Interview 40, 45). Both groups within the Commission relied on outside allies to push for their position.

A key ally for Commission officials in favour of a Community-wide trading mechanism was the UK who had a strong influence at this stage of the policy process (Interview 37, 39). The national target proposed by the Commission for the UK entailed a radical shift to UK policy compared with existing domestic policies and its RES share in 2005 (see Figure 5). The UK's progress towards achieving the 2010 RES-E target underlined this: in 2006 the UK had only reached an RES-E share of 4.63% starting from 2.12% in 1997; this is compared to its 2010 RES-E target of 10% (CEC, 2009d: 11). This explains the UK's keen interest in flexibility to meet the target in the most cost effective way; a Community-wide trading mechanism was seen by the UK as a means to achieve flexibility and thus reduce costs (Interview 36). A study commissioned by the UK government concluded that the annual cost to the UK in 2020 of meeting its RES target would be €1.7 billion higher without a trading mechanism (Pöyry, 2008).

A briefing note⁸⁵ from UK officials showed that UK officials had met with Commissioners, cabinet members and officials since April 2007 to stress the importance of an integrated approach to the implementation of the climate and energy package. It noted that: "On the particulars of the solutions, discussion with Dep head of Piebalgs cabinet, Chris Jones, shows he is thinking along similar lines to the UK in terms of the need to use flexible approaches such as EU wide trading to meet a renewable target [...]". The note argued that "from a UK point of view, given the concern on not undermining the EU ETS, and the difficulties of making large increases in renewable investment domestically, we would tend to favour options with maximum flexibility over what and where investments can be made to minimise costs [...]". It recognised the challenge to maintain this position within the Commission cabinets and services and

⁸⁵ Internal briefing paper for UK ministers prepared by officials from the UK Department for Business, Enterprise and Regulatory Reform "Draft options paper on renewables target" (no date), <http://image.guardian.co.uk/sys-files/Guardian/documents/2007/08/13/RenewablesTargetDocument.pdf>.

with other Member States and pointed to the need to influence key Member States' views, namely France, Germany, Italy and Poland. The briefing concludes that:

“UKREP's [the UK's permanent representation to the EU] advice is that we should concentrate our influencing primarily at senior level within the Commission where the decisions over approach will be made. Meetings are planned before the summer with the Cabinets and the two relevant Directors General. [...] Alongside this, we will continue to engage and lobby Member States towards the emerging UK position.”

This seemed to be a successful strategy. In September 2007 Dörte Fouquet, representative of EREF and forceful opponent of an EU-wide trading mechanism, noted in an open letter that “a group of anti feed-in hardliners has convinced Commissioner Piebalgs [...] to introduce a EU wide system [...] which favours trade and green certificates for Renewable Energies” (Fouquet, 2007). Fouquet named Catherine Day, Director General of the Commission's Secretariat General, Jos Delbeke, deputy Director General of DG ENV, Christopher Jones, and Peter Vis as key advocates of trading within the Commission.

Besides the UK, Eurelectric, the European power industry association representing all major European electricity companies, were keen to introduce a trading element in the new RES directive (Interview 44). In a joint press release in November 2007, Eurelectric, together with the European Federation of Energy Traders (EFET) and Renewable Energy Certificate System Association (RECS), underlined the need for a harmonised trading mechanism, arguing that it should be prevented that one third of the electricity market is closed off “through the creation or continuation of non-market-based incentive mechanisms” (Eurelectric, RECS et al., 2007). This argument was based on the assumption that the 20% RES target would lead to roughly an RES-E share of one third in the EU electricity market by 2020. BusinessEurope President Seillière wrote to Barroso in November 2007 expressing his concerns about the costs of the 20% RES target. He called for “utmost flexibility” for achieving the target and for the introduction of a harmonised support system for RES (Europolitics, 2007).

Commission officials opposed to the trading mechanism effectively used conflict expansion to include new actors (Baumgartner and Jones, 1993). Leaked drafts of the directive proposal that included trading provisions took Member States like Germany by surprise (Interview 47), and led to fierce opposition by some Member States. Germany, Denmark and Spain lobbied against the introduction of a trading mechanism by pointing to the benefits of renewables in terms of new industry and employment (Interview 27).

In January 2008, Germany and Spain, backed by Latvia and Slovenia, wrote to Commissioner Piebalgs arguing that the proposal threatened FiT support systems and implying that this “is not acceptable to our governments” (Toke, 2008: 3003). The German Ministry for the Environment argued that a mandatory EU-wide GO trading scheme in parallel with existing national support systems would wipe out FiT systems. Moreover, it was argued that it would lead to additional costs of €4 billion per year in Germany by 2020, and of €100 billion per year by 2020 for the EU as a whole (Schöpe, 2007). Conflict expansion through the pronounced opposition by some Member States and the RES industry, contributed to last minute changes of the draft proposal’s provisions on certificate trading (Interview 27, 41, 42, 43).

Although the scheme included in the Commission’s draft proposal did not aim explicitly for a harmonised EU-wide certificate trading scheme, a number of Member States considered FiTs as being threatened. Since the GO trading scheme could have regarded GO certificates as “goods” in the internal market according to Art. 28 of the EC Treaty, national support systems could have eventually been regarded as a distortion of the internal market. As a consequence, national RES support systems could “fall from the current scheme of being independent legally sustainable national mechanisms into the legal category of unsustainable obstacles to trade” (Johnston, Neuhoff et al., 2008: 130).⁸⁶

This view was also shared by the Commission’s Legal Service, which argued that it was not possible in the internal market that individual Member States could refuse GO trading as foreseen by the Commission, since GO certificates would be considered as a good whose trade cannot be restricted in the internal market (Interview 41). On the basis

⁸⁶ For a detailed legal discussion of the Commission’s RES proposal’s implications for national support systems see Johnston, Neuhoff et al. (2008: 129ff) and Fouquet and Johansson (2008: 4086-4091).

of the Commission's Legal Service's opinion, it was realised among pro-trading officials that the intended scheme would have resulted in a run on the national support system with the highest support. This would have ultimately led to a race to the bottom of national support systems (Interview 41).

Immediately after the agreement at the Spring Council 2007, MEPs tried to influence the drafting process (Interview 30), which was reflected in regular exchanges between key MEPs and Commission officials and MEPs (Interview 32). In its resolution to the RES Road Map from September 2007, the EP stated that it "believes that national support schemes would nevertheless be needed to maintain investor confidence" (EP, 2007b), thereby supporting those Member States that opposed the Commission's trading proposal.

In addition, the RES industry and environmental NGOs were strongly opposed to an EU-wide GO trading scheme and put their position forward forcefully (Interview 25, 26, 27, 38). Christian Kjaer, chief executive of EWEA, argued that an internal energy market was a precondition for an EU-wide trading mechanism and that trading could not be an objective in itself but that the key issue was how to achieve sufficient RES growth (EWEA, 2007; Kjaer, 2007). The RES industry's position was strengthened by the success of the RES industry in the past (Interview 29), with high growth rates reflected in higher employment in this industry sector (see also 2.1).

Although the published proposal for the RES directive still included trading mechanisms, opponents succeeded in introducing an opt-out clause that would limit the pressure on existing national support schemes. Art. 9(2) states that "Member States may provide a system of prior authorisation for the transfer of guarantees of origin [...]" if such a system "is likely to undermine the achievement of the environmental objectives underlying their support scheme", or to ensure that national targets are achieved.⁸⁷

6.4.2 Issue definition: 'master frame' and policy experience

Proponents of an EU-wide harmonised certificate trading system argued that cost-effectiveness should be the key objective when allowing Member States to trade GO. GO trading would allow Member States to achieve their RES target not only within

⁸⁷ Yet, "the system of prior authorisation shall not constitute a means of arbitrary discrimination".

their territory but anywhere in the EU where RES investments can be achieved at lowest costs (Interview 41). Cost effectiveness was of particular importance for the UK. They feared that it had to bear the highest share of the additional RES investment by 2020 due to the consideration of GDP per capita in calculating national targets, and as a result of the insufficient progress in national RES investment in the past (Interview 36).

Arguments for a market-based system were in line with the Commission's objective to further the internal energy market as already expressed in the 2001 RES-E directive in the context of a Community-wide framework for RES support systems (Rowlands, 2005). It matched with the "master frame" (Nylander, 2001) of the single market that exerted a strong framing effect during the preparation of the RES directive (Nilsson, Nilsson et al., 2008: 24). This line of argument had already been put forward by DG TREN in 1999 during the preparation of the 2001 RES-E directive (CEC, 1999b). Fouquet and Johansson (2008: 4081) argue that the 1999 Commission working paper "introduced a negation of FiT mechanisms as viable competitive instruments for the promotion of RE[S] in Europe. FiT mechanisms were labelled as non-competitive and not to be considered further for a harmonised mechanism in Europe." The theoretically based frame on the advantages of market- or quantity-based RES support mechanisms, and a harmonised EU-wide support mechanism, could, however, be successfully challenged in this policy process on the basis of empirical experience with these instruments.

Opponents of the Commission's proposed GO trading system insisted that the promotion of RES was not only about pursuing RES investments anywhere in the EU at lowest costs, but that it was also about local or national benefits in terms of employment and stimulating technological progress (Interview 47). It was argued that public support and acceptance of RES would drastically decrease if the benefits of public financial support for RES did not directly benefit the national economy (Interview 41, 47). In addition, a market-based support system that channelled RES investments to the cheapest investment option, would not stimulate technological progress in renewable energy technologies in the earlier stages of development. GO trading "would undermine the ability of Member States to implement technology and resource-differentiated support schemes, which are intended to support a technology portfolio and avoid high(er) consumer costs" (Johnston, Neuhoff et al., 2008: 128).

From a theoretical viewpoint, the empirical analysis implies that frames put forward by Commission officials as policy entrepreneurs were strongly institutionalised. Moreover, the different frames put forward by Commission officials confirmed that the Commission could not be treated as a monolithic policy entrepreneur but as being represented by various “frame entrepreneurs” (Nylander, 2001: 293). These entrepreneurs did not only reflect different paradigms among different DGs (Lauber, 2005) but also within DGs.

6.4.3 Institutional venues

The Commission was the main institutional venue during issue specification where key decisions were taken. Commission internal frames were therefore central to this process. As would be expected, in the absence of a formal proposal during the drafting process between March 2007 and January 2008, there was no official discussion in the Council’s working party (Interview 31).

Two informal institutional settings served as venues for the exchange of views among key participants in the policy formulation process: the Amsterdam Forum and the International Feed-in Cooperation.

The Amsterdam Forum was organised jointly by DG TREN and the Dutch Ministry of Economic Affairs, with the objective of providing opinions on EU policy initiatives in the field of renewable energy and energy efficiency. Participation in the Forum is limited to representatives from EU Member States and representatives from NGOs, energy companies and other organisations in the field of renewable energy and energy efficiency. It met for the first time in October 2005 and complements fora such as the Madrid Forum (gas) and the Florence Forum (electricity).

The Amsterdam Forum was used to exchange positions between the Commission, Member States and other stakeholders (Interview 38, 44). The Forum was considered as influential on the policy process since it illustrated Member States positions and enabled discussions on certificate trading, and thus made Member States aware of the underlying issues (Interview 28). The RES Road Map was discussed at the third

Amsterdam Forum in November 2006 and RES support mechanisms were discussed at the fifth Amsterdam Forum in October 2007.

Another institutional venue that proved quite influential throughout the policy process was the International Feed-In Cooperation, which was established by the German and Spanish governments in 2004 to promote the diffusion of FiT and was joined by Slovenia in 2007⁸⁸. The “Feed-In Cooperation” was an important network of like-minded Member States that enabled communication and common statements. This resulted, for example, in a January 2008 letter from the German and Spanish environment ministers to the Commission stating that FiT should not be called into question (Interview 47). Germany and Spain were very active through the “Feed-In Cooperation” (Interview 28). A workshop in October 2007 was used to reaffirm opposition against a mandatory EU-wide GO trading scheme, and to defend existing national support systems. Instead a voluntary coordinated or harmonised feed-in system was suggested (International Feed-In Cooperation, 2007).

6.4.4 *Summary*

The political agreement on the binding 20% RES target by the European Council provided a very strong mandate for the Commission’s drafting process of a legislative proposal. Since the package had the highest political priority, the drafting process was accordingly highly politicised as illustrated by regular high-level interventions within the Commission as well as from outside the Commission. While nobody could question the overall binding target agreed by the heads of state, there was no pre-set methodology on how to determine national binding RES targets. Major conflicts on national targets were prevented by an open and consensual drafting process between the Commission, Member States, MEPs and other stakeholders.

While the Commission sought consensus on national targets, it did not do so on the proposed flexibility mechanism. Subsequently, the Commission had to dilute its original proposal due to the strong opposition from Member States like Germany and Spain seeking to defend their national support schemes. Those Member States were supported

⁸⁸ A Joint Declaration of the International Feed-In Cooperation was signed on 6/12/2005 by German and Spanish representatives, and provided the formal basis for the Feed-In Cooperation that was initiated in 2004 at the International Conference for Renewable Energies (renewables2004) in Bonn.

by the EP, the RES industry and environmental NGOs. The flexibility mechanism was also strongly contested within the Commission.

6.5 Issue expansion: time pressure

“It happens that one proposal is important but this [the climate and energy package] literally almost sucked up the whole machinery of the Council, COERPER, the EP and the Commission to get this through on time. For the rest it was completely normal negotiations.” (Interview 31)

The issue expansion phase started with the publication of the RES proposal in January 2008, and ended with the political agreement in December 2008. A key development at this policy stage was an alternative proposal for flexibility mechanisms put forward by Germany, the UK and Poland, which sought to overcome the main difficulty in the negotiation process: the Commission’s proposals on GO trading. Although it could be argued that issue expansion in the RES policy process started earlier, when Commission officials sought either consensus on their initial ideas or support from outside allies, the formal phase of issue expansion began with the publication of the proposal.

Institutional considerations provided an important incentive for securing a rapid agreement under the French Council Presidency. The Czech Council Presidency, which followed the French Council Presidency, had clearly signalled that it would not push the climate and energy package any further under its Presidency (Interview 47). In addition, the end of the EP’s mandate in May 2009 would also complicate the negotiations if they became drawn out. The European Council conclusions from March 2008 acknowledged this time pressure by agreeing that deliberations on the package between the Council and the EP should lead to agreement by the end of 2008 “or at the latest early in 2009” (Council, 2008a: 12).⁸⁹

Political agreement on the RES directive was reached in December 2008 under first reading procedure. Table 4 provides a comparison of the initial Commission proposal, the EP amendments and the agreed directive. GO trading and flexibility mechanisms

⁸⁹ In March 2008, the European Council also agreed that the Slovenian Presidency would aim to reach political agreement on the third internal market package by June 2008, that the French Presidency would try to reach political agreement on the climate and energy package, and that the Czech Presidency would deal again with the internal market package.

remained a key issue in the discussion. The political dynamics of achieving a compromise on this issue during the issue expansion stage is analysed in this section.

Table 4: Comparison of key elements of different versions of the RES directive

Policy issue	Commission directive proposal COM(2008)19 final (January 2008)	EP report (A6-0369/2008, September 2008)	Agreed directive (17086/08) (December 2008)
<i>Targets</i>	<ul style="list-style-type: none"> • Mandatory national overall RES targets (Annex I, Part A) • Indicative trajectory on how to achieve the 2020-target (Annex I, Part B) 	<ul style="list-style-type: none"> • Inclusion of mandatory minimal interim targets in Part B of Annex I with the introduction of penalties if interim targets are not met. 	<ul style="list-style-type: none"> • Mandatory national overall RES targets (Annex I, Part A) • Indicative trajectory on how to achieve the 2020-target (Annex I, Part B)
<i>Calculation of the share of energy from renewable sources</i>	<ul style="list-style-type: none"> • Biofuels and other bioliquids need to fulfil environmental sustainability criteria • Member States can apply that long lead-time projects that might not be operational by 2020 count towards their 2020-target • RES-E from third countries can be taken into account if consumed in the Community 	<ul style="list-style-type: none"> • All biomass for energy need to comply with both environmental and social sustainability criteria • RES-E from third countries need to be physically imported and these third countries need to have binding targets for RES in place “comparable in ambition to the EU target” 	<ul style="list-style-type: none"> • Biofuels or other bioliquids need to fulfil sustainability criteria • RES-E from third countries need to be consumed in the Community and originate from a new RES-E installation that has not benefited from other support schemes than investment aid.
<i>Support schemes</i>	<ul style="list-style-type: none"> • GOs are linked to national support mechanisms • the aim is to introduce an EU-wide certificate system in the long-term 	<ul style="list-style-type: none"> • Each MS can decide to which extent RES produced in a different MS is supported. • Introduction of TACs • GOs for disclosure purposes only 	<ul style="list-style-type: none"> • Each MS can decide to which extent RES produced in a different MS is supported.
<i>Flexibility mechanisms</i>	<ul style="list-style-type: none"> • Transfer of guarantees of origin 	<ul style="list-style-type: none"> • TACS • Statistical transfers between Member States • Joint projects between Member States • Joint target compliance 	<ul style="list-style-type: none"> • Statistical transfers between Member States • Joint projects between Member States • Joint projects between Member States and third countries • Joint support schemes
<i>Grid access</i>	Priority grid access for renewable electricity insofar as the security of the electricity system permits	Provisions on priority are substantially expanded and include the operation of distribution and transmission networks.	Either priority access or guaranteed access to the grid-system of electricity produced from RES
<i>Sustainability criteria</i>	<ul style="list-style-type: none"> • Environmental sustainability criteria for biofuels and other bioliquids • GHG saving from the use of biofuels and other bioliquids: at least 35%. 	<ul style="list-style-type: none"> • Detailed environmental and social sustainability criteria for biomass for energy • Criteria shall apply to biomass cultivated within and outside the Community • GHG savings from the use of transport fuels from biomass shall be at least 45% and from 1/01/2015 GHG savings shall be at least 60%. 	<ul style="list-style-type: none"> • Sustainability criteria for biofuels and other bioliquids cultivated within and outside the Community • GHG savings: 35%, from 2017: 50%, after 2017: 60%

6.5.1 Contextual factors: the financial and economic crisis

A major exogenous event in the second half of 2008 was the unfolding of a global financial and economic crisis, which it was feared would lead to the collapse of the industrialised economies (The Economist, 2008). This crisis prompted an extraordinary informal meeting of selected EU leaders in Paris on 4 October. The French president Sarkozy – at the time president of the European Council – invited the political leaders from Germany, Italy and the UK along with Commission president Barroso, ECB president Jean-Claude Trichet and Jean-Claude Juncker, head of the Eurogroupe⁹⁰. Although the official objective was to sort out the EU position in view of the next G8 summit, it was also considered as a preparation for an EU summit scheduled for mid-October in Brussels. The seriousness of the financial and economic crisis raised questions about the political priorities and if the climate and energy package could and should remain the political top priority in the EU agenda.

There was a risk that the economic crisis might negatively affect on-going EU policy discussions (Mazey, 1998; Wendon, 1998). National officials confirmed that there were discussions at the beginning of October about whether the climate and energy package should continue to be treated with the same political priority, or whether the focus should be put on the economic and financial crisis instead (Interview 46, 47). Although some Member States would have been comfortable with giving up the political momentum on the climate and energy package, key people in all Member States agreed that a decision on the climate and energy package should be reached by the end of 2008 (Interview 46). Proponents of the climate and energy package argued that the financial and economic crisis even underlined the need for rapid agreement on the climate and energy package (Interview 47). The political process was considered as institutionally too advanced to be stopped and heads of state were clearly committed (Interview 47). The European Council in mid-October therefore reaffirmed its commitment taken at the spring summit 2008 to agree on the climate and energy package by the end of 2008 (Council, 2008c).⁹¹

⁹⁰ www.ue2008.fr: Sommet sur la crise financière internationale.

⁹¹ It might have been more likely to find an agreement on the well-advanced climate and energy package than on measures of how to address the financial and economic crisis.

6.5.2 *Policy entrepreneurs: alternative proposal*

The French Council Presidency became the principal policy entrepreneur in this phase of the negotiations. Officials from other Member States argued that the French Presidency played by far the most important role in securing political agreement on the climate and energy package by the end of 2008 (Interview 39, 47). France made the climate and energy package top priority during its Presidency, and put strong pressure on all participants to find an agreement (Interview 29). The French Presidency's commitment to achieving a political agreement on the climate and energy package can be explained by at least two factors (Interview 46): the Council conclusions from March 2008, which called for an agreement by the end of 2008 also in view of the Copenhagen process, and the national commitment to an ambitious energy and climate policy as agreed at the "Grenelle de l'environnement"⁹². In addition the French Presidency had the resources of a large Member State to push the negotiations forward (Interview 47), and could thus exploit dynamics introduced by the agreement of the European Council and the international climate negotiations.

The Slovenian Presidency in the first half of 2008, by contrast, was in a moderating role that kept the process on track without major political decisions (Interview 38) and managed the process in cooperation with the Commission (Interview 39)⁹³. While the French Presidency played a key role, its success was strongly supported by other policy entrepreneurs including Member States, MEPs and the Commission, as will be discussed in the remainder of this sub-section.

Major themes of the negotiations during issue expansion were GO trading and sustainability criteria (Interview 30, 31, 32, 37, 38, 45, 46, 47). The intensive discussions on flexibility and sustainability criteria might have helped to avoid any major conflicts on targets (Interview 29, 41). Member States were also familiar with the national targets before their publication, which might have prevented major discussions on national targets in the Council (Interview 27). Despite the consensual agenda-setting

⁹² The "Grenelle de l'environnement" was a for national stakeholder process in France that was launched in July 2007 and presented its conclusions in October 2007. The conclusions call for an ambitious increase of renewable energy sources in France, which was broadly in line with the EU RES target for France.

⁹³ The co-called Trio Presidencies among three subsequent Council Presidencies that coordinated their work programme were Germany, Portugal and Slovenia (2007-2008) and France, Czech Republic and Sweden (2008-2009).

approach on targets and a general consensus on the targets, a few Member States including Poland considered their national target as “very ambitious” and “too ambitious” (Council, 2008d: 12), and wanted to open political discussion on those targets. While they could not question the overall target since it had been agreed by the heads of state, the national targets were considered as being open for political discussions because they were proposed by the Commission (Interview 39).

However, the Slovenian and French Presidencies used their power of agenda-exclusion (Tallberg, 2003) and blocked any discussion of national targets in the Council (Interview 39). The large majority of Member States did not want to start a discussion on targets (Interview 31, 34), because everyone knew discussing individual targets would call into question the whole directive (Interview 36, 37). Since the overall RES target was fixed, negotiations on national targets would have constituted a zero sum game. Every participant in the negotiation knew that changes in one national target would affect those of others. Initial debates in the Council focused therefore on the same issue as in the final stage of the drafting process: flexibility mechanisms and national support schemes.⁹⁴

The first unofficial meeting of the Council’s energy working party in early February 2008 showed that there was insufficient support for the Commission’s GO trading proposal – 10 to 15 Member States were not in favour of GO trading (Interview 39). Attempts to change the Commission’s GO trading proposal were ongoing in parallel in the Council and the EP. GO trading provisions were one of the first things to change after the publication of the proposal because both a majority in the Council and the EP were against these provisions (Interview 32).

A turning point in the policy process was an alternative proposal⁹⁵ to GO trading brought forward jointly by Germany, Poland and the UK at the June Energy Council. Its key points were: Member States could decide if and to what extent RES produced in other Member States would benefit from their national RES support schemes (Art.

⁹⁴ In the final stages of the issue expansion phase the remaining controversial issues included the inclusion of the aviation sector in the method for calculating the 20% target, the appropriateness of a “large projects” clause, imports of RE from third countries, GO, statistical transfer, and rendez-vous clauses.

⁹⁵ “NON-PAPER: Joint proposal by Germany, Poland and the United Kingdom on an alternative renewable flexibility mechanism”, <http://www.endseurope.com/docs/80627a.doc>.

3(2a)), GOs were limited to disclosure purposes (Art. 6); possible statistical transfers between Member States (Art. 7); joint projects between Member States (Art. 8-9) and; joint target compliance (Art. 10). The alternative proposal by the UK, Germany and Poland was a turning point in the policy process because the proposal clearly identified a problem, outlined the reason for opposition and suggested an alternative (Interview 31, 46). This alternative underlined that the key political conflict was not about the problem – the need to provide flexibility to Member States in fulfilling their RES targets – but about the best way to ensure the flexibility necessary in order to achieve the agreed targets.

This alternative proposal, and thus its conflict definition, was acceptable and credible because it was put forward by three Member States that represented quite diverse positions in this policy process. They were very different in terms of their existing national support systems, their RES potential and already realised RES shares (e.g. Coenraads, Reece et al., 2008). The UK followed a market-/quantity-based approach system, whereas Germany used FiT for the support of RES (Mitchell, Bauknecht et al., 2006). Having the UK as a supporter of market mechanisms and Poland as a new Member State behind the alternative proposal made it a strong compromise (Interview 32, 41). The alternative proposal was also supported by France and Spain. France did not want to sign because it was the incoming Presidency, and Spain could not sign because of the national elections in March 2008 and the change of the Minister of Industry, Tourism and Trade, and afterwards the General Secretary for Energy (Interview 34). France agreed with Germany on the risks and potential detrimental consequences on national RES markets of the flexibility mechanism put forward by the Commission (Interview 46).

The alternative was acceptable to everyone since it provided flexibility and trading between Member States as well as stability for national support systems. Member States opposed the idea of a common certificate trading scheme because it would have obliged them to change their national support systems. Most Member States, moreover, wanted to keep national control over their support mechanisms (Interview 36, 39, 44, 46).

Early ideas for an alternative proposal sought to avoid a division between pro-trading and anti-trading positions by putting forward a different certificate system. By doing so,

Germany tried to win the support of Member States where certificate systems were already in place (Interview 47). Discussions between Germany, Poland, and Spain on an alternative proposal had already started in March 2008 (Interview 39). In April 2008 the “Feed-in Cooperation” organised a workshop on flexibility mechanisms, which all major Member States attended to exchange views on the flexibility mechanisms of the draft RES directive⁹⁶; Germany and Spain emphasised that they would not support certificate trading as proposed by the Commission (Interview 26). The UK joined these countries in May 2008 (Interview 34) after it was clear that Germany would not accept the proposal tabled by the Commission. A UK official expressed the view that, since both France and Germany opposed to the Commission proposal, compromise was inevitable (Interview 36).

The UK’s U-turn was a central factor in enabling major progress in this policy process and deserves closer examination. A UK official argued that the UK’s initial objective was not to create a harmonised EU trading system, but a flexibility mechanism that would permit investment in RES outside national territory that could be included in the national RES target (Interview 36). The UK’s U-turn was also due to the stance of influential actors such as Ofgem. It was opposed to an EU-wide certificate scheme, referring to high costs and a technology blind approach that would favour wind energy (Interview 28). British advocates of a trading system, moreover, were under strong pressure because the UK certificate-based system was considered as very expensive (Interview 43). The Commission’s 2005 assessment report, for example, showed that for onshore wind the UK ROC scheme was the most expensive one: “Support schemes for wind vary considerably throughout Europe with values ranging from €30/MWh in Slovakia to €10 per MWh in the UK” (CEC2005c: 26).

In 2006, a report by the UK Carbon Trust pointed to the need for reform of the UK support scheme in order to attract more RES investments in the UK (The Carbon Trust, 2006)⁹⁷. The UK was no longer convinced by green certificates given the poor performance of their national certificate scheme (Interview 41).

⁹⁶ The workshop was held on 16/04/2008 in Brussels, for a full agenda see: <http://www.feed-in-cooperation.org/content/view/56/71/>.

⁹⁷ The report argues: “the RO (by design) passes regulatory risk to the private sector, which the private sector accordingly prices at a premium. This leads to leakage of the subsidy away from developers, as suppliers take a margin to deal with this risk and funding from financiers is therefore available on less

Before the publication of the alternative proposal there were unofficial consultations between the Member States involved and representatives from the EP and the Commission (Interview 39); this included an informal gathering at the German Permanent Representation to the EU to inform all relevant actors about this proposal and explain its purpose (Interview 31). This inclusive approach, in addition to the factors described above, contributed to the substantial support the proposal received when it was presented to the Council's Energy Working Party.

As a consequence of the UK's U-turn, pro-trading Commission officials lost their key outside ally. Commission officials ensured their influence during issue expansion by accepting the alternative proposal (Interview 31). The Commission's key interest was a successful outcome of the negotiations (Interview 33, 47). By accepting the alternative proposal, and by not insisting on its flexibility mechanism, the Commission was in a position to act as "honest broker" (Interview 46) and important moderator between the Council and the EP (Interview 46, 47) during the formal triologue in November and December 2008.

In the EP, the Committee on Industry, Research and Energy (ITRE) was dealing with the RES proposal, and Claude Turmes MEP (Greens/EFA-LU) was chosen as rapporteur. Turmes had a track record as a forceful supporter of EU RES policy. He had been rapporteur on the 2004 communication on the share of RES in the EU where he wanted to establish a 25% EU RES target as "feasible" by 2020 (EP, 2005). Many interviewees agreed on Turmes' key role at this stage of the policy process. Early in the process Turmes expressed his opposition to an EU-wide certificate scheme as proposed by the Commission. His draft report in May 2008 limited GO to a disclosure role as in directive 2001/77/EC (EP, 2008b). Convergent positions between Turmes and Germany helped in securing an agreement on flexibility mechanisms.⁹⁸ The initial draft of an alternative proposal put forward by Germany included a system similar to that proposed by the EP (Interview 47). Turmes succeeded in obtaining a large majority within the

favourable terms than it would otherwise be. There is wide and growing consensus that the RO needs to be adapted or changed [...]". A UK internal debate on future RES support schemes was launched by a consultation on the UK Renewable Energy Strategy in June 2008 that refers also to the potential benefits of feed-in tariffs (BERR, 2008).

⁹⁸ This convergence was facilitated by the fact that the German environment ministry and Turmes were both advised by the German Öko-Institut.

ITRE committee to support his final report (EP, 2008a) (see also Table 4). This strengthened his position during the trialogue with the Council and the Commission. Turmes skilfully used the time pressure created by the French Presidency's determination to obtain an agreement by the end of 2008, and insisted that the EP would rather aim for a second reading than a compromise at any price (Interview 27).

Industry lobbying was subject to a particular pattern in relation to the RES directive, and the climate and energy package in general. With respect to the RES directive lobbying was focused upon sectoral, or even technology specific, interests and how to reach the RES target, i.e. flexibility mechanisms (Interview 35). EREC, as the umbrella group for RES, was dominated by RES-E and was therefore most interested in GO trading and less in biofuels. By contrast, RES-H/C interest groups were mostly interested in administrative measures (Interview 32).

In general the RES industry was lobbying for the maximum support by the EP (Interview 46). In fact Turmes was in close contact with RES industry lobby groups, and most of his amendments were in line with their position (Interview 25, 26). In general, the RES industry was opposed to an EU-wide trading system and put forward studies on the potential detrimental effects of such a system and its legal implications. This proactive approach in opposing the Commission's flexibility mechanism might have resulted in a higher visibility and stronger arguments against a Community-wide trading mechanism (Interview 45).

By contrast, industry groups in favour of a trading scheme were not as vocal in expressing their support. Although Eurelectric was officially in favour of trading, as expressed during issue specification (see 6.4.1), this position was not unanimous among Eurelectric members. An increasing number of utilities recognised the investment opportunities in the renewables sector (e.g. offshore wind for which smaller developers do not have sufficient capital). As a consequence of these different opinions within Eurelectric there was less drive to oppose or change parts of the RES directive (Interview 44). This is reflected in a study commissioned by Eurelectric and written by Pöyry – the same consultancy firm that wrote the BERR study published in March 2008. The study concluded that the cost of reaching the overall EU RES target would be €17 billion lower by 2020 with trading as opposed to national support systems

(Eurelectric, 2008). However, the public version of this study was published only in autumn 2008 and therefore too late to influence the decision-making process (Interview 44). Similarly BusinessEurope did not maintain a strong position in favour of GO trading as expressed during issue specification (Nilsson, Nilsson et al., 2008: 16).

Among organisations that represented and defended pro-trading positions, EFET and RECS were considered as most visible in the policy process (Interview 38). Both argued strongly in favour of market mechanisms to achieve the 20% RES target in order to achieve the target at least additional cost (EFET, 2007; 2008; RECS, 2008a; b). However, instead of supporting the Commission's proposal published in January 2008, EFET and RECS were critical because the opt-out clause was considered as unsatisfactory. This critical stance was regretted later when they realised that this proposal could have constituted an important step towards an EU-wide trading mechanism (Interview 43).

A Commission official expressed the view that the lack of strong outside supporters of an EU-wide market-based trading system considerably weakened the position of pro-trading Commission officials (Interview 41).

Once broad agreement on flexibility mechanisms was reached, discussions focused on other parts of the climate and energy package (Interview 37, 39). The RES directive was considered as less complex than the other directives of the climate and energy package, particularly the revision of the ETS directive. As a consequence, negotiations on the ETS directive took more time, whereas the RES directive was already agreed before the December summit (Interview 47). Some observers suggested that the complexity of other parts of the climate and energy package might have helped to facilitate a quicker agreement on the relatively less complex RES directive (Interview 29, 33).

6.5.3 Issue definition: Community vs. national control

The alternative proposal put forward by the UK, Poland and Germany redefined the problem and thus affected the dominant frames in the discussion. The need for flexibility was acknowledged and remained a key issue on the agenda, but the internal market as "master frame" was gradually replaced by the question where RES support schemes should be controlled, i.e. at the Community or national level.

While the question on the effectiveness and cost-efficiency of different RES support schemes remained an important issue, the national leverage on RES support schemes became predominant in the discussion and in the positions of individual Member States. The arguments related to cost-efficiency by proponents of an EU-wide certificate trading scheme were questioned by the empirical evidence on the past performance of different national RES support schemes. Studies showed that FiTs were, in most cases, more cost-efficient and effective than certificate schemes.

During issue expansion the discussion therefore moved away from the question of which support scheme was most appropriate towards which level of control was most appropriate. This was a precondition to open up the policy process for a compromise across different ‘camps’ of support schemes that combined two objectives: no harmonisation of support schemes at EU level, and flexibility in target compliance.

6.5.4 Institutional venues: high politics limiting actors’ access

The time pressure under which the RES directive was negotiated influenced the role of institutional venues, which in turn affected the outcome of the negotiation process. While the process was characterised by discussions within and between all levels as reflected in various kinds of informal contacts, the formal trialogues and COREPER were the key institutional venues at this stage of the policy process.

The European Council maintained its influence on the negotiation process. This was also ensured by the agreement under the French Presidency that heads of state would have the final say on the agreed climate and energy packages at the European Council in December 2008 (Interview 46). For the EP it was however difficult to accept that every Member State would have another say at the December summit before signing the political agreement.

The role of institutional venues, and thus access of policy entrepreneurs to the decision-making process, was strongly influenced by the agreed first reading procedure. Very early in the process, ahead of the French Council Presidency, French officials got in touch with important MEPs to accelerate the process and lobbied for a first reading procedure (Interview 27). In addition French president Sarkozy’s suggestion to reach

consensus in the Council reinforced the pressure to agree on compromises (Interview 28, 47). From September 2008 onwards there were many intensive discussions in COREPER on the RES directive. After the UK-DE-PL paper was integrated into the proposal, COREPER had to find a common position for the formal trialogue negotiations with the EP under first reading procedure. The process was much more at the political than the technical level at that stage. Although it could have been dealt with at a technical level within the Working Party, COREPER had more power and authority to take responsibility to reach a deal (Interview 31).

In November and December 2008 there were seven trialogue meetings between the Council, the EP and the Commission on the RES directive (Interview 46). Every week COREPER dealt with the state of the negotiations and agreed on the negotiation mandate for each step of the negotiations. The key challenge was the time pressure in this process since there were normally only 24 to 48 hours for the Presidency to evaluate the flexibility it could ask from Member States, while the EP was always calling for the maximum (Interview 46). There was no time to discuss proposals in detail in the working groups. Therefore the Presidency had to know national positions very well to assess what would be acceptable to all Member States. Before the formal trialogue between September and November, there were several COREPER meetings on key questions that allowed Member States to outline their national positions (Interview 46). The French government had a very good knowledge of national positions having conducted many bilateral meetings during the first half of their Presidency (Interview 34). In addition, the French deputy ambassador held several bilateral meetings with every Member State to assess national positions (Interview 47).

One national official expressed the view that COREPER had a particular institutional advantage in this process because COREPER deals with all political issues. It therefore covers both energy and environment issues, whereas the ministerial level is divided in different Council formations on energy and environment. COREPER enabled ambassadors to agree quickly on compromises across the whole package (Interview 47).

By contrast, within the EP responsibilities were shared between different committees. The Committee on the Environment, Public Health and Food Safety was leading on ETS, burden sharing and the CCS proposals, while the Committee on Industry,

Research and Energy was leading on the RES directive. From this perspective the EP was institutionally disadvantaged because the different elements of the climate and energy package were dealt with by different rapporteurs and in different committees, making it difficult for the EP to find compromises across the whole package (Interview 47).

The first reading procedure led to particular institutional dynamics. Although first reading procedures have become common use in EU policy-making since their introduction by the Amsterdam Treaty – in fact between 1999 and 2008 nearly 60% of Community legislation was adopted under the first reading procedure (Council, 2009b) – the procedure has predominantly been used for technical matters and less on proposals in “‘mainstream’ policy areas” (Nugent, 2006: 409). Due to the high attention paid to the climate and energy package the first reading procedure was therefore not the obvious choice. Some MEPs were hesitant to agree to first reading procedure process because it meant negotiating with the Council without a plenary vote (Interview 31). The strong ITRE-majority was therefore a crucial source of support for Turmes during the trialogue negotiations. Initially many participants in the policy process had preferred a second reading procedure to build up more pressure (Interview 26, 28), or to prevent agreement (Interview 27). Thus, the first reading procedure prevented conflict expansion and clearly restricted actors’ access to decision-making.

6.5.5 *Summary*

The issue expansion phase was characterised by extreme urgency for political agreement, as underlined by the commitment taken at the spring summit 2008 to find a political agreement by the end of 2008. This was due to the end of the EP’s legislative period in May 2009, the ambitions of the French Presidency, the rather sceptical position of the Czech Presidency on the climate and energy package, as well as the international climate change negotiations. This time pressure had important ramifications for the policy dynamics at this stage of the policy process. The urgency for agreement from the top level made it very difficult for Member States to formulate opposing positions as far as the overall agreement was concerned. Long discussions on details related to national preferences by questioning brokered compromises between the Presidency and the EP, would have made agreement under the French Presidency impossible. Throughout the issue expansion phase, the RES directive as part of the

climate and energy package remained at the level of high politics, or was closely observed by the top level as illustrated by the strong involvement by COREPER.

Since negotiations on sustainability criteria for bioenergy were delegated to an ad hoc working group due to its technical nature, flexibility mechanisms were predominant in the political discussion. Any attempts by some Member States to put national targets on the agenda were blocked by the Presidencies. The alternative proposal put forward by Germany, the UK and Poland brought together three Member States that reflected different interests within the Council. The proposal was therefore credible as a basis for a compromise. The Commission very quickly accepted this alternative, and supported it after a key ally of its certificate trading scheme, the UK, changed its position. This enabled the Commission to play an important role as a credible policy broker during the trialogues with the Council and the EP. Institutional key players were the French Presidency and EP rapporteur Turmes. The French Council Presidency had the capacity to push things forward, and EP rapporteur Turmes had a strong majority behind him and was recognised as a knowledgeable person in this field.

6.6 Chapter conclusions

The agenda-setting process of the RES directive was characterised by a gradual convergence of low-level and high-level politics. The 2001 RES-E directive's reporting requirements on targets compliance against the 2010 targets, and on RES support schemes in view of introducing a Community-wide framework, initiated important low politics processes. At the same time the lack of EU legislation on RES-H/C attracted much attention from the EP and the RES industry during policy initiation. The Commission responded by drafting a separate RES-H/C directive in the second half of 2006, but this drafting process was undermined by high politics processes. Contextual factors, particularly the global climate change debate, were very significant variables during policy initiation in that they strongly accelerated the RES policy process as part of the climate and energy package. However, financial and economic crisis as another important contextual factor could slow down or even stop the policy process at the issue expansion stage. This suggests that the political priority assigned to the proposal was too high, and the institutional process too advanced for potentially countervailing contextual factors to have effect. It could be argued therefore that the influence of

contextual factors on the EU agenda-setting process depends on the policy stage of an issue career.

Throughout the policy process, high-level politics provided an important institutional venue with ramifications for policy outputs. The Spring Council 2007 provided crucial legitimisation for the Commission's policy objective of binding RES targets during the drafting process. After the publication of the RES directive proposal, the discussions remained at a high political level. The proposal was regularly discussed at COREPER level, particularly during the final stages of issue expansion and the Council's Working Party lost significance. As a result there was restricted access to the negotiation that was reinforced by the trialogue under first reading procedure. This helped to secure political agreement by the end of 2008.

The timing of the Council Presidencies and their agenda shaping powers (Tallberg, 2003) were an important factor in influencing the dynamics of this process by agenda exclusion (targets) and agenda-setting (alternative proposal). The latter was strongly facilitated by entrepreneurial preparatory activities by key Member States in the Council. Although national positions played an important role the analysis points to the importance of how these national positions were channelled through to the decision-making process at the EU level in order to influence agenda-setting and thus policy outputs.

High-ranking Commission officials failed with their proposal to introduce an EU-wide GO trading mechanism. This could be explained by conflict expansion strategies among opponents to this mechanism, and by the lack of strong outside allies in support of this mechanism. The analysis illustrates the importance of distinguishing between different positions and policy entrepreneurs within the Commission. It has been shown that differences on GO trading within the Commission were not only apparent between different DGs (Nilsson, Nilsson et al., 2008), but also between Piebalgs' cabinet and DG TREN officials. Piebalgs' cabinet had a different view from officials in the leading unit D1, whose position was backed by powerful policy entrepreneurs including Germany, Spain, MEPs and the RES industry lobby.

Despite the strong opposition towards the Commission's proposal on GO trading and the successful alternative proposal put forward by the Council, the Commission was able to maintain an influential role as policy broker during issue expansion. This was because the Commission was prepared to retreat quickly from its initial proposal after it became clear that there was no majority in the Council. It strategically adapted its position away from a harmonised trading scheme in order to ensure agreement on the Commission's major objective: binding national RES targets. Although a binding overall RES target had already been politically agreed at the Spring Council 2007, it would have been very unlikely that the RES directive proposal, which was to translate these overall target into a legal instrument and mandatory national overall targets, would have been accepted by a majority of Member States if the GO trading mechanism as put forward by the Commission had been maintained.

7 Comparative analysis of two policy processes: the nuclear package and the RES directive

7.1 Introduction

The purpose of this chapter is to draw comparative conclusions from the two case studies analysed in the previous two chapters on the basis of the theoretical framework developed in Chapter 3. The chapter intends to bring together the main results from the previous empirical chapters, identifying more generalisable conclusions by assessing the explanatory value of the variables used in the empirical analysis. Whilst the context-dependent knowledge generated in both case studies is an important contribution to the literature (see 4.4), this chapter aims to go one step further by assessing how the results from both case studies can serve for analytical generalisation in view of the propositions identified in Section 3.3.

The comparative analysis is structured along the key concepts of the theoretical framework: low politics and high politics as EU agenda-setting routes, contextual factors, policy entrepreneurs, issue definition, and institutional venues. The sub-research questions summarised in Table 2 (see 4.5) served as a guideline for this chapter.

7.2 EU agenda-setting routes: low politics and high politics

Princen and Rhinard (2006) distinguish between high and low politics as two agenda-setting routes in EU policy-making. ‘High politics’ is more political (e.g. issue initiation by the European Council) compared with ‘low politics’, which is more technocratic (e.g. issue initiation by officials or expert communities). Both routes are assumed to follow the four stages of an issue career: initiation, specification, expansion, and entrance. Depending on how the issue is initiated, they distinguish different characteristics for each stage in the issue career.

Drawing upon this framework, in the high politics route political leaders initiate an issue due to a politically salient event, and they seek a political consensus in the European Council. At the issue expansion stage the consensus is then ‘expanded’ towards lower levels of decision-making in the EU where the political momentum reached at high politics helps the issue to enter the formal agenda. By contrast, a low politics agenda-setting route is usually initiated out of professional concerns or interests by officials, expert communities or other stakeholder groups. Proposals are then further

elaborated and ‘expanded’ towards higher political levels to achieve entrance to the formal agenda (see Table 1 in Section 3.3.1). As was argued in Section 4.3 both case studies illustrate these two contrasting agenda-setting routes.

The nuclear package was put on the agenda mainly through low politics processes. Despite high-level backing by the responsible Commissioner and Director-General, there were no preparatory high-level political discussions with Member States or MEPs to reach a political consensus as a basis for issue specification. It was specified at the technical level by Commission officials without the involvement of relevant expert, advisory or other stakeholder groups. Member States were taken by surprise when the nuclear package was published, which ultimately reinforced opposition against the proposed radical policy change. Issue expansion was characterised by a Council-led consultation process providing WENRA with access to the discussion process. The issue was kept predominantly at the technical level and thus at the level of low politics. However, at the same time the nuclear package began to follow a more inclusive approach to agenda-setting. The consultation process opened up the policy process to new actors such as national regulators organised within WENRA. This helped create input legitimacy (see 3.3.3) and build political impetus. The Commission’s follow-up strategy continued this approach by formally involving outside actors within the newly established HLG and ENEF as high-level institutional venues (see more detailed discussion below). Therefore a gradual build-up of “impetus” (Princen and Rhinard, 2006) to expand this low politics agenda-setting process towards high politics could be observed.

In contrast to the nuclear package, the RES policy process was predominantly a high politics agenda-setting route which could build on “political momentum” (Princen and Rhinard, 2006) benefiting from significant change in the policy context (see below). At the stage of policy initiation political leaders had already strongly supported the Commission’s initiative for an overall binding RES target at the 2007 Spring Council. On this basis, the Commission could elaborate a political agreement into a concrete policy proposal. Issue specification was characterised by political discussions on RES targets. However, the proposal of a GO trading mechanism was put forward by Commission officials without substantial prior political or technical discussions and was eventually rejected during issue expansion. During issue expansion the discussion

remained at the level of high politics as reflected in the attention paid to this process by the European Council and COREPER. After the 2007 Spring Council and its support for a binding 20% EU RES target, the RES policy process was under continuous high-level attention among and within all EU institutions. The agenda-setting route of both case studies is summarised in Table 5.

Table 5: Stages of two agenda-setting processes: high vs. low politics

	Nuclear package	RES target and GO trading
Issue initiation	Commission internal initiation process	Political leaders supported policy initiation by the Commission
Issue specification	No political or technical discussions in expert groups and working parties	Political discussions on national RES targets but not on GO trading
Issue expansion	Council-led consultation process at the technical level providing access to WENRA	Discussion remained on the agenda of high politics (European Council, COREPER)
Issue entrance	No gradual built-up of impetus	Strong political momentum

The case studies therefore broadly confirm Princen and Rhinard's (2006) proposition that high politics initiation can create the necessary political momentum for successful agenda-setting, whereas initiation at the level of low politics can easily get stuck in the agenda-setting process if impetus is not gradually built up. The high-level political interest in the RES policy process created political momentum that had important ramifications for the decision-making process. The explicit and reaffirmed political ambition at the level of high politics created pressure that geared all actors towards finding political agreement, making substantial opposition nearly impossible after initial opposition in the Council of Ministers was overruled at the highest political level. By contrast, in the case of the nuclear package, the Council-led consultation processes resulted in a lengthy discussion process that took several years, preventing any formal decision and thus constituting a phase of non-decision.

This confirms that "in the expansion stage, the complexity of EU institutional structures will offer opportunities for actors to steer proposals into certain venues, and to call upon sympathetic expert communities to build support" (Princen and Rhinard, 2006: 1123). This support can accelerate decision- or non-decision-making. The eventual expansion

of the nuclear safety issue to the high politics realm reaffirms the dynamic interaction and intersection of low and high politics which will be elaborated below.

The nuclear package as a case study of agenda dynamics at the level of low politics, demonstrates that expert communities should not be considered as neutral actors in the policy process. Instead they acted as stakeholders and pursued their own objectives and interests. In the analysed process national nuclear regulators constituted the core of the expert community due to their expertise and knowledge. At the same time they had a strong interest in preventing a shift of institutional responsibilities from the national to the EU level, which would have limited their own influence.

The EU agenda-setting framework put forward by Princen and Rhinard can explain key dynamics in both case studies. However, the empirical analysis confirmed that additional explanatory variables are necessary to fully explain the agenda-setting process in both case studies. Based on the agenda-setting and EU studies literature, four such variables were identified: contextual factors, policy entrepreneurs, issue definition, and institutional venues (see 3.3). The explanatory value of these variables is discussed in more detail in the subsequent sections.

7.3 Contextual factors: policy windows

Contextual factors can contribute to opening up policy windows that can be used by policy entrepreneurs to push their pet proposals (3.3.2). Policy windows are most likely to open up in the problems-stream (e.g. focusing events, new indicators/statistics) or politics-stream (e.g. public opinion) (Kingdon, 1995 [1984]). Earlier studies on EU energy policy showed that focusing events were particularly important in advancing European energy policy (Matlály, 1997). Furthermore focusing events can affect the level of politics at which energy policy in EU policy-making is dealt with: “As long as gas and oil flow and there are no nuclear accidents, energy issues remain largely a matter of ‘low politics’” (Matlály, 1996: 258).

Although, in both agenda-setting processes analysed, contextual factors had a clear impact on policy initiation, the nuclear package could not build on a focusing event (problem-stream) or public opinion (politics-stream). EU enlargement – as the main contextual factor to justify the publication of the nuclear package – was more of a long-

term contextual change than a focusing event that could have underlined the need for urgent policy action in this field. The Commission's argument, that agreement on the nuclear package needed to be reached by the EU enlargement in May 2004, was not compelling enough to serve as a focusing event. In addition, the Commission's reference to public opinion (politics-stream) in support of its proposals was not convincing. The Commission used public scepticism towards nuclear energy, mainly related to nuclear safety and radioactive waste management, to underline the need for the nuclear package. It was argued by Commission officials that changes in institutional structure, i.e. the expansion of Community jurisdiction, could contribute to a more favourable public opinion in order to keep the nuclear option open within the EU. However, the subsequent 'revival' of nuclear energy in the EU energy policy debate was less related to EU-level changes, but more to changes in the wider political context at the national level.

In the case of the binding RES target a change in the political context helped policy initiation. This change in the political landscape was led by the UK where energy security and climate change were on top of the national policy agenda as expressed in the initiation of a new energy review and of the Stern review. These developments at the national level affected the EU energy policy agenda through the UK's Council Presidency (see 7.4). This was reinforced by the Russia-Ukraine energy crisis at the beginning of 2006, which attracted high politics attention at the EU level. This was followed by the publication of the Stern review in autumn 2006 and an IPCC report at the beginning of 2007. In parallel Al Gore's film "An Inconvenient Truth" contributed to a strong public and political awareness of climate and energy issues.

The Commission's climate and energy package could fully exploit these contextual factors as a policy window. As part of the climate and energy package, the RES policy processes could benefit from these changes at the very beginning of the agenda-setting process. Commission officials – supported by the incoming German Council Presidency – decided to go beyond an additional RES-H directive as announced earlier and to aim for a binding 20% EU RES target. Although it was too late for the nuclear package to fully benefit from these changes, the new policy dynamics at EU level also helped to keep key elements of the nuclear package on the EU agenda. The 2007 Spring Council conclusions supported the establishment of a High Level Group on Nuclear Safety and

Waste Management building on the earlier consultation process. Moreover in November 2008 a new proposal on nuclear safety was published.

It was therefore focusing events, new scientific evidence, and strong public awareness that significantly influenced agenda-setting dynamics. Public opinion was an important factor that influenced the Commission's decision to propose an ambitious climate and energy package and the 2007 Spring Council's decision to support binding RES targets. These results confirm recent contributions to EU studies that agree on the increasing politicisation of European integration since the early 1990s and the role of public opinion in European integration (Börzel and Risse, 2009; Hooghe and Marks, 2009; Schmitter, 2009).

The political momentum achieved at the level of high politics in the RES policy process from the 2007 Spring Council onwards, supported by strong public opinion, led to an institutional momentum at EU level in that all EU institutions were working to achieve political agreement by the end of 2008. This momentum helped reduce the detrimental effect of other contextual factors, namely the financial and economic crisis that reached a low point in autumn 2008⁹⁹. While economic downturn blocked progress in past EU policy processes (Mazey, 1998; Wendon, 1998), the climate and energy package was institutionally too advanced to be halted by the financial and economic crisis that dominated the political agenda from the second half of 2008 onwards.

7.4 The role of policy entrepreneurs

Policy entrepreneurs aim for policy change or stability in line with their "pet proposal" (Kingdon, 1995 [1984]). In order to achieve this, policy entrepreneurs need to build coalitions around certain problem definitions and develop appropriate policy solutions (see 3.3.3). In the absence of strong or well-prepared policy entrepreneurs to seize a policy window, policy change is unlikely to materialise (Pralle, 2006). A formal monopoly on the EU agenda by the Commission (Majone, 2006) would suggest that the Commission is the primary target of policy entrepreneurs seeking to push for their policy objectives. By contrast, the lack of a monopoly on informal EU agenda-setting (Pollack, 2003), and the multiple access points in EU policy-making (Peters, 2001),

⁹⁹ The investment bank Lehman Brothers filed for Chapter 11 bankruptcy protection on 15 September 2008.

suggests that the Commission also needs to be considered as a policy entrepreneur in order to achieve its policy objectives.

Both case studies strongly confirm that all EU institutions and other interested parties need to act as policy entrepreneurs to achieve their policy objectives. Moreover both case studies confirm that the stage of the issue career affects policy entrepreneurs' influence on EU agenda-setting. Each policy entrepreneur's role is discussed in this section.

Some authors have argued that the Commission's influence is focused upon the early stages of the issue career (Eising, 2002; Nugent, 2006), i.e. policy initiation and issue specification, due to its limited control over the later stages. Previous studies have identified various conditions for the Commission to act as a successful agenda-setter: the build-up of "winning coalitions" (Nugent, 2006), consensus-building (Pallis, 2006), strong majorities (Princen and Rhinard, 2006), broad consultation with stakeholders (Hennessy, 2007a), and selling its proposal (Wendon, 1998). Both case studies tend to confirm the proposition that Commission officials themselves need to act as policy entrepreneurs "by identifying policy problems, proposing and selling policy proposals and brokering compromises" (Wendon, 1998: 344).

In the case of the binding RES target (an example of successful Commission agenda-setting), key Commission officials engaged in political discussions with Member States in order to sell their proposal of a binding RES target and to build winning majorities – except for the proposal for a GO trading scheme. This process was backed by high politics dynamics after the 2007 Spring Council. By contrast, in the case of failed Commission agenda-setting there was little attempt to build a coalition with key participants or to consult stakeholders in advance. Existing Commission advisory groups were excluded from the drafting process and controversial issues such as the timetable for national radioactive waste management programmes were kept on the agenda and the Commission was not prepared to split the package into its key components to reach agreement on certain elements of the proposal.

Both case studies confirm that the early stages of an issue career are the key stages for Commission agenda-setting to build majorities and legitimacy for new proposals.

However, the later stages of the nuclear package with the establishment of the HLG and ENEF as well as the publication of a revised proposal for a nuclear safety directive indicate that the Commission can have important influence at the later stages of an issue career by establishing and using suitable institutional venues. This will be discussed in more detail below.

In particular, the Euratom-based nuclear package underlines that the Commission needs to act as a policy entrepreneur, not only in policy areas where the Commission is in a legally weak position as demonstrated in the case of social policy (Wendon, 1998), but also in areas where the Commission enjoys a legally strong position. Despite the Commission's institutional strength under the Euratom Treaty, Commission officials could not impose their proposals. Instead they had to accept that majorities need to be built in order to reach political agreement.

The agenda-shaping powers of the Council Presidency (Tallberg, 2003) were strongly visible in both policy processes. Tallberg distinguishes between three mechanisms of agenda-shaping of the Council Presidency: *agenda-structuring* influences the attention on a given issue already on the agenda by determining the frequency of meetings within a policy area, by arranging informal meetings or by the structure of actual meeting agendas; *agenda-exclusion* influences the agenda by not dealing with a topic, by removing it from the decision agenda or by tabling unacceptable compromise proposals; and *agenda-setting* has an impact on the agenda by raising awareness to new policy problems, by developing concrete proposals for action or by developing new institutional practices.

Each of these mechanisms is manifest in the case studies. In the case of the nuclear package the agenda was significantly (re-)structured by the WPNS consultation process and the subsequent HLG and ENEF consultation process, while the revised nuclear package tabled by the Commission in September 2004 was excluded from the Council's decision-agenda. The French Council Presidency influenced agenda-setting by encouraging the Commission to put forward a new proposal on nuclear safety, which was published in November 2008. The agenda of the RES policy process was structured by the French Presidency by frequent meetings and an ambitious deadline for political agreement, while the German Presidency strongly supported agenda-setting by its

commitment to push through ambitious climate and RES targets. Agenda exclusion was used to prevent discussion on RES targets during issue expansion.

The comparative analysis suggests that Council Presidencies' leverage for agenda-shaping can be strongly supported by entrepreneurial Member States in the Council, by building coalitions, and proposing alternative policy solutions. In both policy processes key Member States built ad hoc coalitions and presented alternative proposals in the form of non-papers. These non-papers were then used by the Council Presidencies as the basis for new compromise proposals that significantly influenced the agenda-setting and decision-making process.

The EP proved to be an important agenda-setter in both case studies. Before the publication of the nuclear package it put the issue of decommissioning funds on the formal agenda, and in the RES policy process it requested legislative action from the Commission. The EP can influence the agenda-setting as a policy entrepreneur by interlocking its own agenda with that of the Commission, and by building informal contacts between Commission officials and the rapporteur (Jones and Clark, 1999). The scope for such interlocking depends, however, on the willingness of both actors and might be influenced by party politics. Commission officials did not actively seek the support from the EP for the nuclear package, and the EP's report on the nuclear "Safety Directive Proposal" was interlocking with the opposing Member States' agenda rather than the Commission officials' agenda.

By contrast, on the RES directive Commission officials and the rapporteur Turmes were in close contact throughout the process and shared the objective of binding RES targets and the continuation of national support schemes. As opposed to the RES policy process in the late 1990s, where the Council and the Commission were the key players (Lauber, 2005), the EP was a dominant actor in the analysed RES policy process due to its full involvement under co-decision, Turmes' expertise and negotiation skills, a strong ITRE committee majority, and its veto position under the first reading procedure. The latter was reinforced by the fact that a second reading procedure under the Czech Council Presidency in the first half of 2009 would have made an agreement before the EP elections in May 2009 very unlikely.

Interest groups constitute a key group of policy entrepreneurs in EU policy-making as they can legitimise Commission proposals (Greenwood, 2007). Factors that influence their success include control of key information, adequate resources as well as their economic and political weight (Nugent, 2006: 313ff). Foratom and Eurelectric represented powerful lobbying groups in terms of their resources and their economic importance. However, Foratom and Eurelectric did not take a clear position in support of the nuclear package and the GO trading mechanism respectively. Neither group could put forward a strong unanimous position because of diverging views among its members. Commission officials could therefore not count on their support as some of them might have expected and hoped for. By contrast, the RES industry proved to be a key player in the RES policy process also due to its increasing economic weight. This was important support for Commission officials who were in favour of binding RES targets and against GO trading mechanisms.

The main agenda-setting mechanisms observed in both case studies in relation to policy entrepreneurs are summarised in Table 6.

Table 6: Comparing policy entrepreneurs' influence on agenda-setting

	Nuclear package	RES target and GO trading
Commission	No attempt to build winning coalitions or to sell proposals to Member States; Controversial issues kept on the agenda; Exclusion of existing advisory committees and working groups; Policy learning and gradual opening-up	Winning coalition around binding RES target and selling national RES targets, but not on GO trading
Council / Member States	Non-papers as alternative proposals by blocking minority	Non-paper as alternative proposal to GO trading
Council Presidency	Agenda exclusion (revised nuclear package), agenda-structuring (consultation process) and agenda-setting (new proposal on nuclear safety)	Agenda exclusion (discussion of RES targets), agenda-structuring (acceleration of decision-making process) and agenda-setting (alternative to GO trading)
EP	No interlocking with the Commission's agenda but with blocking minority in the Council	Strong supporter of ambitious RES policies; Strong opposition to GO trading as part of a coalition
Interest groups	No clear support for Commission's proposal	Strong support for RES targets by RES industry; No clear support for GO trading

Although not a policy entrepreneur itself, the ECJ can perform an important role in EU agenda-setting (Tömmel, 2008b). In the case of the nuclear package the ECJ ruling was an important push for the Commission during policy initiation and issue specification in that it helped weaken opponents' legal arguments against the nuclear package (see 5.3.2). This was, however, only a supporting element that could not counter-balance the above-mentioned other shortcomings related to the initiation and specification of the nuclear package. The RES policy process showed that the ECJ cannot only be in a supporting role for the Commission, but also for other policy entrepreneurs such as Member States. The ECJ's ruling in 2001 in support of FiTs strengthened pro-FiT positions and weakened the Commission's arguments on the necessity of a GO trading mechanism (see 6.2.4).

Both case studies provide insights into the role of expertise on EU agenda-setting. For the Commission, expertise can be an important tool in agenda-setting (Marks and Hooghe, 1996). In the highly technical issue of nuclear safety standards and radioactive waste management, the Commission did not have strong in-house expertise at its disposal. This is why the Commission had established expert groups for advice on these issues. However, instead of using their expertise during the nuclear package drafting process, these expert groups were sidelined and eventually discontinued. This contributed to weakly designed policy proposals providing opponents with multiple reasons to withhold their support. However, the RES policy process shows that Commission officials' strong expertise on market-based policy instruments (see 6.4) was not sufficient for pushing the proposed GO trading mechanism through the EU policy-making process. The involvement of experts and other stakeholders is therefore not only important in order to gain access to information and expertise but also to build legitimacy for new policy proposal at an early stage.

The empirical analysis in this thesis suggests that expertise in EU agenda-setting is most important for those actors without a formal role in the agenda-setting process. External expertise can be an important source of information for the Commission services during legislative drafting. Stakeholders can gain access to the decision-making process through their knowledge, and influence the early stages of the agenda-setting process. This can provide output legitimacy and input legitimacy as long as equal access is granted to different stakeholders and interests.

Stakeholders' influence is not restricted to the drafting process but can also affect the later stages of the agenda-setting process. As the case of the nuclear package showed, national nuclear safety authorities, informally organised within WENRA, could influence the policy process after the nuclear package was published on the basis of their expertise, reinforced by their political weight in national policy-making.

7.5 Issue definition and framing

Issue definition predetermines possible solutions to the problem and influences the access of actors to the decision arena (Baumgartner and Jones, 1993). Frames go one step further in that they include problem definition, a solution to the problem, rules about who should be involved, and a justification for action at the EU level (Princen, 2007). Framing can serve different purposes, including consensus building or restricting interest groups' access to the policy-making process (Nylander, 2001). It has been argued that frames in EU policy-making can be influenced by institutional settings including organisational, procedural, and normative structures (Lenschow and Zito, 1998) (see 3.3.4).

In the two case studies analysed, institutional structures influenced the framing of the proposals, and thus not only the solution to the problem but also actors' access to decision-making. In order to be able to propose the nuclear package under the Euratom Treaty's consultation procedure, with a limited role for the EP, Commission officials chose nuclear safety as the package's primary policy objective. While the inclusion of provisions for decommissioning funds, as required by the EP, helped prevent a separate co-decision procedure under the EC Treaty and thus restricted actors' access, it increased opposition among Member States and interest groups. Although the broad problem definition might have helped to put the issue on the agenda, it did not facilitate the adoption of the intended policy (Dery, 2000). The Commission's approach was based on various issue definitions and raised doubts about the actual objective of the proposals and how they would address the identified problems.

In the case of the RES directive the normative power of the internal market as "master frame" (Nylander, 2001) was apparent in the proposition of the GO trading mechanism. Trading mechanisms were strongly supported by DG ENV which preferred a market-

based mechanism that would be compatible with or build on the EU ETS system. However, the justification for a Community-wide RES trading scheme to provide flexibility to Member States, and to ensure the implementation of the RES target at lowest cost, was subject to strong opposition among Member States and within the EP. Based on the economic success of the RES industry, opposing Member States and MEPs could refer to competing frames such as the effectiveness of national support schemes. Opponents reframed the envisaged EU-wide harmonisation from being an efficient policy instrument to an instrument that was ineffective and expensive. It would also prevent Member States from deciding on their national support schemes and thus lead to a competence shift to the Community level. In both cases opponents to the Commission's proposals framed the debate in relation to the intended competence shift from the national to the Community level.

Commission officials as "frame entrepreneurs" (Nylander, 2001: 293) can put forward different frames even if they belong to the same DG or unit. The concentration of nuclear competences within DG TREN before the drafting of the nuclear package prevented major frame contestation within the Commission that had occurred in the past between DG TREN and DG ENV on nuclear issues. The RES policy process revealed contrasting frames between DG TREN and DG ENV, and between energy Commissioner Piebalgs' cabinet and the responsible unit in DG TREN, in relation to the assessment criteria and objectives of RES support schemes.

New entrants to the policy arena can contribute to issue redefinition and thus support policy change (Baumgartner and Jones, 1993). In both policy processes there were no new entrants that would have supported the Commission's issue redefinition to support the intended policy change. In the case of the nuclear package new Member States were new actors who had formal access to the decision-making process after the EU enlargement in May 2004. New Member States were opposed to the Commission's reference to EU enlargement as a rationale for new nuclear safety regulations, and aligned with opposing Member States when COREPER adopted a common position in June 2004. In the RES policy process there were no 'real' new entrants, but the RES industry became an increasingly powerful player due to its economic success. Moreover, some incumbent players, such as traditional utility companies, increasingly

benefited from national FiT support mechanisms. They were therefore not in favour of the Commission's changes to existing support systems but opposed them.

The observed agenda-setting mechanisms in relation to issue definition and framing are summarised in Table 7.

Table 7: Issue definition and observed agenda-setting mechanisms

	Nuclear package	RES target and GO trading
Institutionalisation of frames	Nuclear safety as key objective on the basis of Euratom	Different frame entrepreneurs within the Commission
Predetermination of solutions	Lack of binding safety principles as issue definition	Internal market as “master frame” for GO trading
Influence on actors' access	Euratom directive put EP in a consultative role	Strong involvement of EP and ‘normal’ access for interest groups
New entrants to redefine issues	New Member States questioned EU enlargement as justification for nuclear package	Emerging RES industry underlined the importance of the effectiveness of RES support schemes

7.6 Institutional venues: actors' access and issue definition

Framing can result in ‘venue shopping’ (Baumgartner and Jones, 1993) by influencing the strategic choice of institutional procedures and venues. As argued above, the Commission's decision to base the nuclear package on the Euratom Treaty (including provisions on decommissioning funds) can be interpreted as a venue shopping strategy. While the EP as a pro-integrationist EU institution (Tsebelis, 1994) might, in general, be helpful for the Commission if a proposal seeks expansion of its jurisdiction, the rather explicit pro-nuclear stance of the nuclear package was sceptically received by the majority of MEPs at the time.

Commission officials, however, drew lessons from the failed venue shopping approach for the nuclear package. The Commission's approach during issue expansion can be interpreted as an example of a strategy taken by “political entrepreneurs” (Broscheid and Coen, 2003). Commission officials used process legislation (Cram, 1993) to establish alternative institutional venues, and thus used the EU institutional structures' opportunities to steer issues in venues sympathetic to their policy objectives (Princen and Rhinard, 2006).

The establishment of HLG and ENEF as institutional venues can be interpreted as an attempt to address factors that contributed to the failed agenda-setting in the case of the nuclear package: consultation with (favourable) stakeholders, pre-testing problem definition and building legitimacy. Moreover, Commission officials sought to integrate the venues established and successfully used by other policy entrepreneurs, notably WENRA and its parallel harmonisation process.

The policy process on the nuclear package therefore confirms that institutional fora in a technical policy process with low political salience can generate high-quality information and thus improve the basis for policy making (Broscheid and Coen, 2003). The consultation process initiated at the end of 2004 and WENRA's work contributed to a better level of information that could be used for follow-up processes from 2007 onwards.

Advisory committees and working groups as institutional venues can provide new proposals with access to independent information and legitimacy (Hooghe and Marks, 2001). Both of these functions were fulfilled by the Council's consultation process and the inclusion of WENRA. The Council's WPNS consultation process put WENRA and thus national regulators in a central role, which predominantly reinforced sceptical views on the Commission's nuclear package. Although WENRA, as an expert group, did not have the political authority to take decisions, its technical authority (Gehring, Kerler et al., 2008) made it difficult for political actors such as the Commission to ignore, or to seriously question, their conclusion.

The change in venue can therefore be less explained by a change in the policy image (Baumgartner and Jones, 1993) than by the expertise of national regulators and their position in national policy-making. By co-opting this parallel process Commission officials tried to increase its leverage on (re-)setting the agenda. This process supports previous studies that argued that EU institutions can use formal arenas to select certain interest groups that are "most in-line with [their] agenda" (Mahoney, 2004: 462).

Apart from technical and political discussions in advisory committees or working groups the European Council as an institutional venue can legitimise the Commission's policy preferences (Nugent, 2006). Princen and Rhinard (2006) argue that such

legitimation from high politics can help to overcome administrative barriers. Interviewees involved in the RES policy process asserted that political agreement by the heads of state and government at the 2007 Spring Council was a key factor in disarming opposition to binding RES targets during issue specification. The agreement at Hampton Court to work towards an energy policy for Europe, confirmed by the 2006 Spring Council, was already an important initial driver in this process.

This legitimacy provided by the European Council was absent in the case of the nuclear package. For the latter, the Commission tried to use the Laeken summit conclusions to legitimise the nuclear package, but some Member States clearly stated that they regard nuclear safety as a national rather than a Community competence. There was thus no consensual agreement on how to proceed on nuclear safety, despite its recognition as a key Community policy objective. Yet, while this first attempt in the nuclear policy process to legitimise a policy proposal by reference to the European Council failed, the European Council's agreement at the spring summit 2007 to establish HLG and ENEF constituted important political support for the follow-up process.

The increasing tendency of the European Council to set long-term strategic goals can be interpreted as qualifying the Commission's formal right of initiative, and as putting the Commission in "a more bureaucratic role of fulfilling the Member States' agenda" (Rasmussen, 2007: 250). However, neither of the case studies confirms that European Council involvement restricts the Commission's leverage on the agenda. Instead it could be argued that the European Council helped achieve the Commission's policy objectives by overcoming administrative barriers. The European Council's support of binding RES targets against the earlier opposition of two Councils of Ministers (energy and environment), and its increasing involvement at the later stages of the nuclear package, does not appear to support the idea that the Commission is increasingly fulfilling Member States' agenda. On the contrary, the political support by the European Council helped secure political agreement against the initial opposition of some national administrations. When political leaders agreed to the binding RES target, national officials had to accept this agreement and had to work towards it.

In the RES policy process with high political salience, the key role of COREPER and the "unofficial" trialogue meetings helped to restrict actor access. The Council

Presidency, the EP rapporteur, and Commission representatives were key actors and could focus on the remaining key issues to ensure political agreement by the end of 2008. This points to the opportunities of the Council's vertical differentiation to overcome conflicts (Eising, 2002). COREPER as the key institutional venue at the final stages of the negotiations on the RES directive helped to find political compromises. This strategy failed in the case of the nuclear package, where there was no clear commitment from all Member States to find political agreement by a fixed deadline. Although COREPER always plays a key role in politically salient issues, and trialogues are used more regularly in EU policy-making to reach first reading agreement (see 6.5.4), the speed and the public interest can be considered as rather unique in the analysed RES policy process.

Before the limitation of the policy process to key institutional fora and actors, conflicts were expanded by policy entrepreneurs to other institutional venues in both cases. Conflicts were expanded in order to include new or additional institutional venues and thereby changing actors' access (Baumgartner and Jones, 1993). The discussions on the nuclear package between the Council and the Commission were transferred to new consultation processes. This reframed the debate away from the EU enlargement context to the added value of new Community legislation in this area. As a consequence the agenda was substantially restructured as incorporated in HLG and ENEF, which led eventually to a new policy proposal on nuclear safety that was significantly different from the Commission's initial proposal. This process indicates considerable policy learning within the Commission on how to use procedural legislation for its own policy objective in a legally strong position on the basis of Euratom Treaty. This learning process was supported or enabled by administrative changes between 2004 and 2006, including the replacement of the DG TREN's Commissioner, Director-General, and the Head of Unit responsible for the dossier.

With respect to Princen and Rhinard's two expectations (see 3.3.1), this thesis supports the claim that institutional structures strongly influence the framing of new proposals due to multiple EU venues. This was strongly asserted in the case of the nuclear package. Moreover framing processes in the RES policy processes point to the importance of normative structures, namely the role of internal market and cost efficiency frames. Princen and Rhinard's second expectation was that, during the

expansion stage, EU institutional structures enable venue shopping. Again the nuclear package process strongly supports this expectation as illustrated by the WPNS consultation processes and HLG and ENEF as follow-up venues.

The observed agenda-setting mechanisms in relation to institutional venues are summarised in Table 8.

Table 8: Institutional venues and observed main agenda-setting mechanisms

	Nuclear package	RES target and GO trading
Venue shopping	NP based on Euratom; Consultation processes	European Council
Legitimation	No legitimisation from the European Council or other institutional venues	Strong legitimisation by Spring Council 2007
Process legislation	Establishment of HLG and ENEF	
Restriction of access under high political salience		Triologue strongly reduced actors' access
Delivery of high quality information under low political salience	Council consultation process and HLG	
Technical authority of institutional venues	WENRA	

7.7 Chapter conclusions

The results of the comparative analysis in this chapter can be summarised in several generalisable conclusions. The results reiterate the dynamics of low politics and high politics agenda-setting. Low politics agenda-setting was characterised by venue shopping strategies by policy entrepreneurs, whereas the high politics process showed a high level of political momentum that helped to overcome administrative inertia. The comparison suggests that contextual factors were particularly important for high politics dynamics. Political salience, backed by public opinion, helped high politics policy initiation. The political momentum could eventually be translated into institutional momentum that prevented the process from being stopped by concurrent salient issues such as the financial and economic crisis.

Despite its role as formal legislative agenda-setter, the comparative analysis points to the importance of Commission officials' policy entrepreneurship to gather majorities

and legitimacy. This is not only the case when the Commission is in a weak legal position, but applies equally to policy processes where the Commission enjoys a particularly strong position as under Euratom. The agenda-shaping powers of the Council Presidency were strongly visible in both policy processes including all three dimensions: agenda-structuring, agenda-exclusion and agenda-setting. The EP's influence on the agenda was most pertinent under the co-decision procedure due to its veto position in the first reading negotiations. Moreover, it was shown that expertise can be an important means for actors without a formal role in the agenda-setting process to influence agenda dynamics. Dominant frames were institutionalised in both case studies and predetermined the proposed policy solutions. At the same time it was shown that the influence of a certain policy solution on the access of certain policy entrepreneurs to the decision-making process can affect the choice of a policy solution. Venue shopping approaches enabled the marginalising of actors and their policy objectives.

8 Conclusions

This final chapter draws together the main empirical and theoretical findings of the thesis. After answering the research questions and summarising the contribution of the thesis to knowledge, limitations and possible directions for future research are outlined. The thesis closes with some tentative policy implications.

8.1 Answering the research questions

Two key research questions were addressed in this thesis as outlined in Section 3.4.3. The first research question was formulated as follows:

- *How did agenda-setting routes (low politics vs. high politics) affect policy change and stability in EU energy policy-making?*

The analysed policy processes on the nuclear package and on the RES Directive clearly confirmed that agenda-setting routes affect EU energy policy-making. The mutually contrasting features of the case studies revealed mechanisms by which agenda-setting routes can affect change and stability in EU energy policy-making.

One key difference between the nuclear package and the RES policy process was how the legislative proposals were initiated. While the nuclear package was drafted by a few Commission officials without the involvement of outside players, the RES Road Map enabled the Commission to pre-test a key policy objective, i.e. a binding EU RES target, before issue specification. The unexpected political agreement by the European Council to a binding 20% EU RES target provided the Commission with strong legitimacy during the drafting process. The high politics agenda-setting route created political momentum that helped to overcome administrative barriers and national opposition to binding RES targets as previously expressed at the ministerial level. The analysis of the RES policy process indicates that it was important that high politics remained involved in this policy process throughout the issue career. This was illustrated by the 2008 Spring Council's commitment to reach political agreement by the end of 2008 and by regular discussions at COREPER level. It is, however, important to note that the RES policy process clearly benefited from being part of the climate and energy package which as a whole attracted attention by high politics.

In contrast to this high politics agenda-setting route on binding RES targets, the nuclear package and provisions concerning an EU-wide GO trading mechanism as part of the RES proposal were initiated at the level of low politics by Commission officials. Both Commission initiatives were rejected and blocked in the subsequent decision-making process. The analysis does not suggest that low politics are doomed to fail in the EU decision-making process, but points more specifically to the lack of legitimacy that characterised both low politics processes at the early stages of the agenda-setting process. Neither initiative was backed by expert communities, advisory groups or interest groups that could have provided the proposals with input legitimacy. There was no gradual build-up of impetus that could have supported the intended policy change, e.g. by engaging outside actors in policy discussions.

The analysis shows that the distinction between low and high politics agenda-setting routes would have been insufficient alone to explain the observed agenda-setting dynamics and policy outputs. The later stages of the nuclear package, for instance, could not have been sufficiently understood on the basis of this distinction. It was necessary to analyse each agenda-setting route in more detail. Agenda dynamics of EU energy policy-making needed to be further disentangled in order to identify causal mechanisms. This was addressed by the second research question:

- *How did contextual factors, policy entrepreneurs, issue definitions and institutional venues influence agenda-setting dynamics in EU energy policy-making?*

The answer to this question is structured along the four variables identified in Section 3.3: contextual factors, policy entrepreneurs, issue definitions and institutional venues.

Changes in the policy context opened important policy windows that were used by policy entrepreneurs to put issues on the agenda. This confirms earlier studies on EU energy policy that showed that external factors had a strong influence on EU energy policy initiative (see 2.2). EU enlargement brought the issue of nuclear safety to the agenda in the early 1990s. In parallel, increasing concerns about global climate change

and energy security helped keep the nuclear option open. However, these contextual factors were not sufficient to create a strong policy window for new policy initiatives.

While this was due to a variety of factors, an important weakness was the lack of a focusing event that could have underlined the urgency for policy action. Such a focusing event – the Russia-Ukraine gas crisis in 2005/06 – was an important trigger during the initiation of the climate and energy package, and an essential factor from the very beginning in the agenda dynamics of the RES policy process and only at the later stages of the nuclear package process. This crisis was supported by an increasing awareness of dangerous climate change and the need for policy action, as emphasised by IPCC reports and Al Gore's film "An Inconvenient Truth". Strong public opinion was identified by many interviewees as one key factor that made the Commission choose climate and energy as its headline topic in 2006/07 after the failure of the renewed Lisbon Strategy.

Policy entrepreneurs used a variety of mechanisms to influence the agenda-setting process. The empirical analysis underlines the importance of using a broad definition of policy entrepreneur in EU agenda-setting that takes account of the influence of different actors on the EU agenda. The Commission is an important policy entrepreneur as it does not have control over the EU agenda. The Commission's failure as policy entrepreneur was most striking in the nuclear package process where the Commission possessed a potentially strong position on the basis of the Euratom Treaty. However, Commission officials failed to build a strong enough case for the proposals and did not succeed in building a coherent problem definition. Apart from insufficiently addressing the policy context, the Commission gave virtually no consideration to whether and how majorities could be secured in the Council and the EP. Similarly, there were no majorities supporting an EU-wide GO trading mechanism as part of the RES proposal. Both 'failures' indicate the need for strong majorities and the need for the Commission to pre-test problem frames at the early stages of the agenda-setting process.

Council Presidencies proved very influential agenda-shapers in both policy processes. The strong signal by the incoming German Council Presidency was an important factor for the Commission to propose a binding 20% EU RES target and to maintain this proposal despite opposition in two Councils of Ministers. A similarly strong agenda-

shaping power by the Council Presidency was visible when France encouraged the Commission to propose a new legislative act on nuclear safety in the second half of 2008. Moreover, the Council Presidency's influence on the agenda was illustrated by the establishment of the Council-led consultation process on the nuclear package that resulted in new policy priorities and non-decision on the nuclear package (see also below). France used its Council Presidency in the second half of 2008 to secure political agreement on the climate and energy package including the RES Directive. This was strongly facilitated by the Council's structure since COREPER as a political forum could reach consensus across different elements of the climate and energy package in relatively short time frames.

The EP proved to be an important agenda-setter in both policy processes. In the case of the nuclear package it used the parallel discussion on the second liberalisation package to call for legislative action on decommissioning funds. This was picked up in the nuclear package, although the EP was no longer involved due to the consultative procedure under Euratom. The issue was dropped in the subsequent stages of the process. Also in the RES policy process MEPs pushed strongly for further legislative action and requested that the Commission put forward a proposal on RES-H/C and supported ambitious RES targets beyond 2010. The latter strengthened the Commission at the early stages of the agenda-setting process against a strong majority of Member States opposed to an ambitious binding RES target. The EP was an essential player contributing to rapid political agreement on the RES Directive. This was also made possible by interlocking the EP's agenda with that of key Member States.

Interest groups' influence on the agenda would be expected to be higher at the early stages under a low politics agenda-setting route by using expert or advisory groups as fora to put forward their objectives. However, in the case of the nuclear package no interest group influence could be identified at the early stages of the agenda-setting process. Although a few consultation meetings took place, Commission internal advisory committees and other stakeholders were excluded from the drafting process. The exclusion of expertise contributed not only to policy proposals being weak but also questioned the input legitimacy of the nuclear package. By contrast, the RES industry strongly contributed to the initiation of a policy discussion on RES targets beyond 2010.

Expertise proved to be an important instrument enabling policy entrepreneurs to gain access to the decision-making process as exemplified by national safety authorities' access via WENRA to the Council-led consultation process. WENRA's technical authority, backed by national nuclear authorities' influential position in Member States, enabled it to restructure the agenda and to put forward new issue definitions.

Issue definitions and frames played a key role in how policy entrepreneurs influenced the agenda in both policy processes. The analysis showed how the institutional framework and normative structures affected the framing of policy proposals. The institutional dimension of framing was most visible in choosing nuclear safety as the key problem that the nuclear package was supposed to address. By including provisions on decommissioning funds in this proposal, based on the Commission's nuclear safety competences under Euratom instead of internal market competences under the EC Treaty, ensured that the EP was only in a consultative role. Normative structures that influence frames could be identified in the RES proposal. The internal market as normative 'master frame' was used to justify an EU-wide GO trading mechanism, although policy experience with national RES support schemes and the success of the RES industry seriously undermined this normative frame.

Institutional venues affected agenda dynamics in both case studies by channelling actors' access to decision-making and by legitimising policy proposals. These two mechanisms were at work at various stages of both policy processes. Issue specification on the basis of the Euratom Treaty restricted the EP's role in the expansion stage of the nuclear package. The Council-led WPNS consultation process granted access to the national nuclear regulators who contributed to legitimising the conclusions of this process on the basis of their expertise. This was then used as basis for the establishment of the HLG and ENEF as follow-up venues. Similarly the dialogues in the final stages of the RES policy process restricted access to key policy entrepreneurs from the Commission, the Council and the EP. In the case of the RES policy process, the European Council proved the most important institutional venue for legitimising the RES targets.

8.2 Contribution to knowledge

The contributions to knowledge from this thesis can be divided into empirical (context-dependent) and theoretical (context-independent) contributions (see 4.4). The research design of this thesis aimed for more generalisable knowledge by choosing two polar case studies of EU energy policy-making. However, caution is needed when generalising across different policy areas or jurisdictions on the basis of qualitative case study research of policy processes (see 4.2). A key objective of this thesis was therefore not only to generate context-independent knowledge, but also to better understand causal mechanisms of EU agenda-setting in EU energy policy-making as social phenomena.

The key empirical contribution of this thesis is to provide insights on EU energy policy-making by an in-depth analysis of two energy policy processes at the EU level. As the literature review in Section 3.4.2 showed, only a very limited number of scholarly studies have so far analysed EU energy policy-making. Most of them have taken a multi-level perspective with a strong focus on national energy policy-making and its ramifications for EU energy policy processes. Furthermore, studies on EU energy policy-making in the field of nuclear energy are virtually absent from the literature. This thesis helps to fill this knowledge gap.

As for its theoretical contribution to knowledge, this thesis confirms that an agenda-setting framework can be a useful theoretical approach for the analysis of EU policy-making. The thesis, moreover, strongly supports comparative approaches to EU studies. The results show that EU institutions cannot only be regarded as instruments of national interests as intergovernmentalist accounts of EU integration would suggest; the findings point to the independent influence of EU institutions in EU policy-making throughout all stages of an issue career. Policy entrepreneurs from all EU institutions affected both agenda-setting processes with a direct impact on policy outputs. However, these policy entrepreneurs need to act within a favourable policy context deriving from focusing events, public opinion, national and international agendas.

Princen and Rhinard's (2006) distinction between low and high politics proved to be a useful heuristic for explaining agenda-setting processes and policy outputs. As assumed in their model, the RES target-setting confirmed that high politics created political

momentum that contributed to political agreement. However, the analysis indicated that continuous attention at the level of high politics was a pre-condition for political momentum. The failure of both low politics processes was explained not by the fact that it was initiated at low level of politics but by the way in which policy proposals were initiated and developed. The results suggested that legitimacy is a key function in agenda-setting. While the European Council, backed by strong public opinion, provided legitimacy for the Commission's issue specification on binding RES targets, input legitimacy, that could have been built up by the inclusion of expert communities and stakeholders, was not available in either of the low politics processes. Procedural elements in EU agenda-setting can make an important contribution to the legitimacy of a policy process by involving relevant stakeholders.

Most importantly, the thesis underlines how the integration of the agenda-setting and EU studies literature can be a fruitful starting point for revealing causal mechanisms in EU agenda-setting and thus explaining policy outputs. The theoretical framework developed in Section 3.3 improved Princen and Rhinard's heuristic by integrating contributions by EU studies on the role of contextual factors, policy entrepreneurs, issue definitions and institutional venues in EU policy-making. All of these additional variables helped to explain policy outputs in both case studies.

A key result of the empirical analysis is that policy entrepreneurs' formal position in the EU agenda-setting can be as important as their informal role. This was most visible in the Commission's failed agenda-setting for the nuclear package and the nuclear regulators' success in increasingly determining agenda-setting and policy output. Contextual factors, issue definition and institutional venues can expand or limit actors' access to the decision-making process. Policy entrepreneurs can be frame entrepreneurs using certain issue definitions to achieve agenda-status and push for their own pet proposals. Venue shopping strategies can help policy entrepreneurs to put forward their issue definitions.

8.3 Limitations and future research

The research questions of this thesis were ambitious as they were deliberately aimed at providing a rather broad perspective on EU policy-making. That is, the research design refrained from picking certain actors or institutional venues to explain 'only' parts of

EU energy policy-making. This macro perspective on policy processes had ramifications for the level of detail of the empirical research. For instance, the internal (agenda-setting) dynamics of each EU institution could not be investigated. The analytical interest was how different players at the EU level interacted, and how these interactions were influenced by the four key factors of the theoretical framework developed in Section 3.3.

Moreover, since the analysis was designed as an analysis *of* policy – instead of an analysis *for* policy – the endeavour was to explain policy outputs with respect to key features of the analysed policy proposals. It could not provide a qualitative assessment of the policy output with respect to its policy objectives. Therefore, failure or success in agenda-setting does not imply any judgement on the merits of the policy output. Future agenda-setting research might put more emphasis on how an agenda-setting route and specific agenda dynamics affect the quality of a policy proposal with respect to policy outcomes. A retrospective analysis could span from policy initiation to policy evaluation. It might be investigated how political momentum achieved by high politics, that can enable rapid political agreement, can at the same time ensure an effective political agreement. This raises the question of whether such an agreement is more likely through a low politics agenda-setting route on the basis of expert advice than through a high-politics route. Future research might also investigate how contextual factors and political salience affect the causal relationship between agenda-setting dynamics and the effectiveness of policy outputs.

National factors and positions and their influence were visible in both processes at various stages of the issue career, but could not be analysed in great detail due to the macro perspective of the research design and space constraints. National interests determine national positions at the international level, and national policy processes affect EU level processes in a multi-level governance setting. However, the central claim of this thesis is that policy outputs in the analysed case studies could not have been explained by putting national interests at the centre stage of the research design. The explanatory power of a theoretical framework that puts more emphasis on the EU level confirms Matlár's (1997) conclusion that explanations of EU energy policy-making need to move beyond a state-centric view.

In the case of the nuclear package national positions could have explained the blocking minority in the Council. However, it was the analysis of the agenda dynamics and the venue shopping strategy around the WPNS consultation process, WENRA, HLG and ENEF that could provide insights on the subsequent policy process and the publication of a new nuclear “Safety Directive Proposal” in November 2008. After this proposal was adopted in June 2009, it would be of particular interest to analyse how agenda dynamics enabled such a relatively quick political agreement.

Future research should aim at providing further empirical insights into the relationship between contextual factors, policy entrepreneurs, issue definitions and institutional venues in EU energy policy-making, and in EU policy-making more broadly. This thesis might serve as a basis to further developing, verifying or falsifying the above propositions.

8.4 Policy implications

The empirical analysis of the RES policy process shows how certain elements of energy policy have moved up from the national to the EU level. Despite the lack of explicit legal competences in energy policy until the Lisbon Treaty came into force, Member States seem to have increasingly accepted EU interference in energy policy-making. Setting aside 20% of the energy market for RES on a legally binding basis constitutes a substantial intervention in national energy policy, although it is left to Member States to choose which RES sectors and technologies are favoured. The acceptance of EU level activity is furthermore underlined by the fact that the RES directive was not adopted under unanimity voting as required under Art. 175(2) if a proposal is assumed to interfere significantly with the national prerogative of EU Member States to choose its energy supply mix.

This study points to some factors that explain how this shift in EU policy-making was possible, and can therefore serve as input for future EU policy initiatives. Contextual factors will remain a key element in future EU energy policy-making. Although focusing events which can serve as important triggers for progress in EU energy policy are contingent, there are areas where such events are highly likely. This includes sudden rises in the level or volatility of energy prices, supply disruptions, climate change related events or new scientific evidence on the latter. Policy entrepreneurs at the EU

level need to be prepared to respond to these problems by developing convincing solutions or policy alternatives, and put them forward when their time has come. Public opinion and awareness on these issues might constitute a fruitful ground for further policy action.

The Commission as formal agenda-setter has a key role to play in this process, but its influence will depend heavily on the support of other policy entrepreneurs. Commission officials need to build strong majorities in the early stages of the policy process with Member States, key MEPs and relevant interest groups. For this purpose the Commission can establish institutional venues that are favourable to its policy objectives. Such venues can be technical or political, as both can provide an information basis and enhanced legitimacy to new proposals. Council Presidencies play an influential role in EU policy-making, and the Commission and other policy entrepreneurs need to anticipate if Council Presidencies are prepared to use their agenda-shaping powers to support new policy initiatives.

The Lisbon Treaty, which came into force on 1 December 2009 with the new Title XX on energy policy and the establishment of a permanent Presidency of the European Council, will affect the institutional dynamics and thus agenda-setting. High politics agenda-setting is likely to be less influenced by rotating Council Presidencies; instead, the policy objectives of the President of the European Council might become more influential and thus also reduce the Commission's leverage on high politics agenda-setting. However, the rotating Council Presidencies will preserve their agenda-shaping powers in the Council of Ministers which is likely to remain of particular importance in EU agenda-setting.

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10 Appendices

Appendix A: Chronological overview of nuclear package policy process (1998-2008)

Date	Key events	Key issues
	Policy initiation	
1998-1999	Various European Council Presidency conclusions	Referring to the importance of nuclear safety in the context of EU enlargement.
02/1999	ECJ procedure Commission vs. Council C-29/99	Based on Art. 146 of the Euratom Treaty the Commission questioned the partial annulment of the unpublished Council Decision of 7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention.
1999	Creation of Western European Nuclear Regulators Association (WENRA)	Objectives: to develop a common approach to nuclear safety and regulation, in particular within the EU; to provide the EU with an independent capability to examine nuclear safety and regulation in candidate countries; and to evaluate and achieve a common approach to nuclear safety and regulatory issues.
2000-2001	Assessment of nuclear safety in candidate countries	Two parallel assessment processes: one led by the Council's ad hoc Working Party on Nuclear Safety (WPNS) with strong involvement of WENRA, one led by the Commission.
11/2000	Report from WPAQ to COREPER "Nuclear Safety in the Context of Enlargement" (13789/00)	"Euratom Treaty does not offer a specific legal basis for the establishment of safety standards for nuclear installations"
11/2000	Green Paper "Towards a European strategy for the security of energy supply" COM(2000)769final	Nuclear energy is considered as important for the EU to become more independent from high and volatile fossil fuel prices, but also to achieve the EU's climate policy objectives.
12/2001	Opinion of advocate general Jacobs Case C-29/99	"According to the current understanding of the health and safety provisions of the Euratom Treaty there is a significant overlap between radiation protection and the safety of nuclear installations"
	Issue specification	
06/2002	Final report to the Green Paper	The future of the nuclear industry is considered as dependent on "finding a clear and unequivocal answer to the question of the processing and transportation of radioactive waste", it also mentions the need for common standards of nuclear safety within the EU.
03/2002	EP amendment to second energy market liberalisation package	highlights the potential market distorting effects of decommissioning funds
11/2002	COM(2002) 605final: "Nuclear Safety in the EU"	
12/2002	ECJ decision C-29/99	"it is not appropriate, in order to define the Community's competences, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation" (para. 82)
01/2003	Presentation of COM (2002) 605final to WPAQ (5377/03)	<ul style="list-style-type: none"> • MS "agreed to the general objective of ensuring a high and converging level of nuclear safety throughout the Community and the need to be able to monitor this" • Recognition of need for long-term solutions to waste disposal

		<ul style="list-style-type: none"> • Few MS “broadly sympathetic” to COM approach
	Issue expansion	
05/2003	WPAQ preliminary discussion of COM (2003) 32 final (9699/03)	“Certain delegations” reaffirm their reservations regarding the added value of the proposals and how they relate to existing international frameworks
07/2003	WENRA paper “Common views on the significance of national responsibility for nuclear safety”	<ul style="list-style-type: none"> • Strong national regulations as cornerstones for nuclear safety – also due to national regulators’ in-depth knowledge • No need for new technical regulations and definitions at the EU level, but global enforcement of IAEA standards
09/2003	COM reply to delegations’ questions (12727/03)	<ul style="list-style-type: none"> • Community system will supervise national safety authorities’ performance of their duties • “Safety Directive Proposal” does not aim to establish technical standards, but relays on CNS provisions • Independent verification system drawing upon experts from MS, no permanent Community inspectorate
09/2003	FIN-SE-UK non-paper on non-legally binding alternative on safety (12951/03)	<ul style="list-style-type: none"> • Emphasises the role of the existing international regime and questions how a harmonisation process of national standards could take place within the EU • COM should support harmonisation process with the help of NRWG • COM should elaborate how the IAEA peer review could be further developed
09/2003	FIN-SE-UK non-paper on non-legally binding alternative on waste (12994/03)	• “each Member State remains responsible for the management of all spent nuclear fuel and radioactive waste under its jurisdiction and for selecting the most appropriate method and time frame for its long-term management”
09/2003	Blair/Schröder letter to COM-president Prodi	
09/2003	Revised draft proposal on nuclear safety (13109/03)	• Addresses the following issues: common safety standards, decommissioning funds, national responsibility for the safety and monitoring
10/2003	Revised draft proposal on radioactive waste (13537/03)	<ul style="list-style-type: none"> • Underlines that MS remain “fully” responsible for the management of all spent nuclear fuel and radioactive waste (recital 12) • No deadlines to be set at Community level
11/2003	COREPER II: policy debate on “issue of principle” (15576/03)	Majority of MS is supportive of legally binding instruments despite the resistance of some MS.
12/2003	FIN-SE-UK position paper (16317/03)	In favour of non-legally binding instrument
01/2004	EP legislative resolution on safety proposal (P5_TA(2004)0012)	<ul style="list-style-type: none"> • Strongly supports amendments made by the Council • Calls for stronger wording on DF provisions and calls for new legislation under EC Treaty (Amendment 30)
01/2004	EP legislative resolution on waste proposal (P5_TA(2004)0011)	• MS to prepare detailed programme for long-term waste management and to present to COM no later than 2006
01/2004	FI, SE, UK, DE table non-legally binding Council Resolution as alternative (5821/04)	Reflects largely the non-paper presented in 2003
05/2004	Note to COREPER (9091/04)	<ul style="list-style-type: none"> • “a large number of delegations support in principle the instruments of Directives as well as the approach reflected in the Presidency texts” (para 7) • Safety proposal: “very small number of delegations” seek clarifications on its scope, level of detail on DF

		provisions, and provisions on the consultation of population <ul style="list-style-type: none"> • “a number of delegations” are still in support of non-binding approach • COREPER could mandate WPAQ “with the finalisation of the texts as a matter of priority”
05/2004	COREPER meeting (9322/04 and 10823/04)	COREPER mandated WPAG to prepare Council conclusions by the end of June.
06/2004	COREPER meeting (10823/04)	Council conclusions call for the assessment of what has been achieved so far at the international level (CNS/IAEA, WENRA, NEA; and EU) within a "wide ranging consultation process"
09/2004	Amended proposals by COM (COM(2004)524final)	Never discussed in the Council
12/2004	WPAQ meeting (15954/04)	<ul style="list-style-type: none"> • WENRA Chairman presented WENRA objective to implement harmonised reference levels by 2010 which was generally welcomed in the Council • WPAQ should take regular note of WENRA's work
12/2004	Note to delegations “Nuclear Safety and Safe Management of Radioactive Waste - Follow-up to the Council conclusions of June 2004: Action Plan” (15955/04)	Action plan for consultation process: “actions should lead to improved consistency and transparency of the Community approach in the field of nuclear safety and safe management of radioactive waste”
01/2005	Note to delegations: First draft of the WPNS working programme (5574/05)	First draft WPNS working programme identified two main issues: assessment of progress on harmonisation of safety standards achieved by other fora and assessment of DF provisions
12/2005	WENRA declaration on harmonisation	Summarises WENRA's objectives for a harmonisation by 2010.
12/2006	WPNS Final Report (15475/2/06 REV 2)	“any new instrument at the EU-level has to build on the existing high level of cooperation and take into account the usefulness of all the existing international contexts”
12/2006	“Consultation process on Nuclear Safety and Safe management of spent fuel and radioactive waste - Parameters and Options” (DS916/06)	<ul style="list-style-type: none"> • WPNS report “as basis to engage in a wide ranging consultation” for the choice of instruments or specific actions and measures • to give “national regulators a fuller role and ensure their inclusive participation”
12/2006	Note to delegations “Consultation process on nuclear safety and safe management of spent fuel and radioactive waste” (17020/06)	<ul style="list-style-type: none"> • Consultation process should cover all three issues: nuclear safety, safe management of waste and spent fuel and financing of decommissioning and safe management of waste and spent fuel
01/2007	PINC for EESC opinion (COM(2006) 844 final)	Suggests “setting up a High Level Group on Nuclear Safety and Security with the mandate of progressively developing common understanding and, eventually, additional European rules on nuclear security and safety”
01/2007	Note to delegations on Consultation process (5407/07)	A revised more detailed draft paper on the follow-up consultation process.
01/2007	WPAQ meeting (5938/07)	<ul style="list-style-type: none"> • need to clarify task (policy-making and/or a regulatory body) and scope (safety not security and the inclusion of decommissioning financing) • broader membership of senior regulators group including policy-makers if needed and to ensure inclusion of MS without formal regulatory authorities
02/2007	WPAQ meeting (6235/07)	“strong support to limit the tasks of the group to nuclear safety, waste management and decommissioning,

		excluding policy-making and nuclear security issues”
03/2007	European Council	Conclusions supporting HLG on nuclear safety
04/2007	Note to COREPER/Council (8784/07)	Council Conclusions on Nuclear Safety and Safe Management of Spent Nuclear Fuel and Radioactive Waste
07/2007	COM decision on HLG (OJ L 195/44, 27.7.2007)	<ul style="list-style-type: none"> • 27 competent national representatives + COM representative • to inform the European Nuclear Energy Forum on a regular basis • shall advise and assist the COM in progressively developing common understanding and eventually additional European rules in the fields of: safety of nuclear installations and the safety of the management of spent fuel and radioactive waste
10/2007	1 st HLG meeting	
11/2007	1 st ENEF meeting	
01/2008	2 nd HLG meeting HLG_M(2008-02)_FINAL	Creation of four working groups
04/2008	3 rd HLG meeting HLG_M(2008-03)_Final	“The aim is to improve nuclear safety, regulation and national responsibility, then to present a report to the Council and Parliament about group's achievements in a one year time frame.”
05/2008	HLG Working Programme HLG_p(2008-04)_10.v1	“Working groups should report to the HLG about the progress of their work towards the end of 2008 and prepare the draft for inclusion in the HLG report for the Council and Parliament, by Spring 2009. The summary report should be submitted to the Council and Parliament by the HLG before July 2009.”
05/2008	2 nd ENEF meeting	Strongly in favour of the adoption of EU legislation on nuclear safety and waste management based on common fundamental safety principles for nuclear installations. With such a legal framework, it was argued, Europe could become “a real model also for possible nuclear newcomers”
09/2008	Report from the Commission to the EP and the Council: Sixth situation report on radioactive waste and spent fuel management in the EU COM(2008)542 final	<ul style="list-style-type: none"> • HLG Working Group to develop a common understanding and, if appropriate, suggest a common approach in the field of the safety of spent fuel and radioactive waste management • Restart of the discussion in the Council and in the EP on an EU legislation
11/2008	3 rd ENEF meeting	
11/2008	COM(2008) 790 final 2008/0231 (CNS)	Proposal for a Council Directive (Euratom) setting up a Community framework for nuclear safety

Appendix B: Chronological overview of EU RES policy process (2004-2008)

Date	Key event	Key issues
Policy initiation: Berlin Conference 2004 – RES Road Map 2007		
01/2004	Berlin Renewables Conference jointly organised by the RES industry and the European Commission, supported by the German government	A target of at least 20% of gross inland energy consumption by 2020 for the EU is considered as achievable. A binding 20% RES target by 2020 was confirmed by an EP resolution.
05/2004	RES communication COM(2004)366	RES-H/C target is considered as difficult to establish. New RES targets beyond 2010 require a new assessment on their global economic effects. This assessment should start in 2005 in order to set a target beyond 2010 in 2007.
09/2005	EP resolution on COM(2004)366 (P6_TA(2005)0365)	<ul style="list-style-type: none"> • Calls on the Commission to set ambitious but realistic targets for ultra-low or non CO₂ emitting and CO₂ neutral energy technologies to supply 60% of EU electricity demand by 2020 • Stresses the importance of mandatory targets for 2020
12/2005	COM(2005)627: support of RES-E	“The Commission will closely monitor the state of play in EU renewable energy policy and, not later than December 2007, make a report of the level of Member States systems for promoting renewables electricity in the context of the on-going assessment related to 2020 targets and a policy framework for renewable energy beyond 2010.” (p. 18)
02/2006	EP resolution P6_TA(2006)0058	• “Requests the Commission to submit to Parliament by 31 July 2006, on the basis of Article 175(1) of the EC Treaty, a legislative proposal on increasing the share of renewable energy for heating and cooling”
03/2006	Green Paper COM(2006)105	<ul style="list-style-type: none"> • If the EU is to meet its longer term climate change goals and reduce its dependence on fossil fuel imports, it will need to go beyond existing targets • Announcement of Renewable Energy Road Map that will address new targets or objectives beyond 2010 and a new Community Directive on heating and cooling
03/2006	European Council conclusions (7775/1)	“considering raising, by 2015, the share of renewable energies, considering a target of 15%, and the proportion of biofuels, considering a target of 8%”
12/2006	EP resolution on Green Paper P6_TA(2006)0603	<ul style="list-style-type: none"> • “asks the Commission to [...] set binding sectoral targets for renewables in order to achieve 25% of renewables in primary energy by 2020 and a road map at Council and Commission level for reaching a target for renewables of 50% by 2040” (para 37) • “Calls on the Commission to present a proposal for a directive on heating and cooling from renewable energy sources as soon as possible” (para 43)
01/2007	An Energy Policy for Europe COM(2007)1; RES Road Map COM(2006)848	• proposes a binding overall RES target of 20% by 2020
02/2007	COREPER (6155/07)	• indicative targets are preferred by a “large number of delegations”
03/2007	Spring Council (7224/07)	• political agreement on binding target of a 20% share of renewable energies in overall EU energy consumption by 2020 and a 10% binding minimum target for the share of biofuels by 2020
Issue specification: Spring summit 2007 – RES proposal 2008		
09/2007	EP resolution RES road map	• calls for RES legislative framework proposal by the end

	P6_TA(2007)0406	<p>of 2007 to be adopted by co-decision on the basis of Article 175(1)</p> <ul style="list-style-type: none"> • existing legislation for the renewable electricity and biofuels sectors should be maintained, but strengthened and improved • binding sectoral targets
01/2008	RES directive COM(2008)19	<ul style="list-style-type: none"> • Overall binding 2020 targets and non-binding interim targets • GO trading mechanism
Issue expansion: RES proposal 2008 – political agreement end 2008		
03/2008	Spring Council	Political agreement to be reached by the end of 2008
05/2008	Note (9648/08)	<ul style="list-style-type: none"> • In view of the ambitious timeline and the complexity of the package, informal contacts with the EP have been established • An enhanced cooperation procedure with ENVI Committee is foreseen.
06/2008	UK-DE-PL proposal	Three flexibility mechanisms put forward as alternative to GO trading mechanism
09/2008	ITRE report adopted (P6_A(2008)0369)	<p>Amendments included:</p> <ul style="list-style-type: none"> • MS remain responsible for national support mechanism • Support of alternative flexibility mechanisms • Priority access and priority during dispatch for renewable energy • Mandatory interim targets
09/2008	Note (French Presidency to COREPER) (12883/08)	<p>Key issues in relation to RES directive:</p> <ul style="list-style-type: none"> • Inclusion of aviation in the denominator for the 20% target • Indicative trajectory • "Large projects" clause • Importing electricity from third countries • Reinforcing measures (administrative barriers, building regulations, certification and installers training, GOs, grid access) • Rendez-vous clause
10/2008	Energy Council (13649/08)	• reaffirms the timetable that the directive should be adopted by the end of 2008 under 1 st reading procedure
10/2008	Preparation for the informal dialogue (14673/08)	<p>Controversial issues:</p> <ul style="list-style-type: none"> • inclusion of the aviation sector in the method for calculating the 20 % target • the appropriateness of a "large projects" clause • rendez-vous clauses
12/2008	Informal agreement on RE directive between Council, EP and Commission	

Appendix C: List of interviews conducted for this thesis¹⁰⁰

Interview 1: Independent consultant, June 2008
 Interview 2: former MEP, June 2008
 Interview 3: Official, European Commission, June 2008
 Interview 4: Official, European Commission, June 2008
 Interview 5: Official, European Commission, June 2008
 Interview 6: Official, Council of the European Union, July 2008
 Interview 7: MEP, July 2008
 Interview 8: Representative, European nuclear industry, July 2008
 Interview 9: Official, BMLFUW (Austria), July 2008
 Interview 10: Representative, EURELECTRIC, July 2008
 Interview 11: EU energy policy consultant, July 2008
 Interview 12: Independent energy and nuclear policy consultant, July 2008
 Interview 13: Official, European Commission, June 2008
 Interview 14: Officials, DEFRA (UK), August 2008
 Interview 15: Official, BERR (UK), August 2008
 Interview 16: Representative, STUK (Finland), August 2008
 Interview 17: Official, TEM (Finland), August 2008
 Interview 18: Representative, SSM (Sweden), August 2008
 Interview 19: MEP, August 2008
 Interview 20: Official, European Commission, August 2008
 Interview 21: Official, Finish Permanent Representation to the EU, September 2008
 Interview 22: MEP, September 2008
 Interview 23: Official, DEHLG (Ireland), September 2008
 Interview 24: Official, Swedish Permanent Representation to the EU, September 2008
 Interview 25: Official, BMWI (Germany), October 2008
 Interview 26: Representative from BEE e.V., February 2009
 Interview 27: Representative from EREC, February 2009
 Interview 28: Representative from EREF, February 2009
 Interview 29: Official, European Commission, March 2009
 Interview 30: MEP policy advisor, March 2009
 Interview 31: Official, Council, March 2009
 Interview 32: Official, European Commission, March 2009
 Interview 33: Former official, European Commission, March 2009
 Interview 34: Official, IDEA (Spain), March 2009
 Interview 35: MEP policy advisor, March 2009
 Interview 36: Official, DECC (UK), April 2009
 Interview 37: Official, DECC (UK), April 2009
 Interview 38: Representative from Greenpeace Brussels, April 2009
 Interview 39: Official, MG (Poland), April 2009
 Interview 40: Official, European Commission, April 2009
 Interview 42: Representative from EFET, May 2009
 Interview 43: Representative from RECS, May 2009
 Interview 44: Representative from Eurelectric, May 2009
 Interview 45: Former official, European Commission June 2009
 Interview 46: Officials, French Permanent Representation to the EU, June 2009
 Interview 47: Official, German Permanent Representation to the EU, June 2009

¹⁰⁰ The views expressed by the interviewees are their personal views and not necessarily those of their institution they represented.